

be planned for such individuals and groups as have faced special obstacles in finding and holding useful and rewarding employment, e.g., those suffering discrimination, the physically or mentally handicapped, older workers, youths, veterans, inhabitants of depressed areas, and workers displaced by the relocation, closing, or reduced operations of industrial facilities.

6. Other national economic goals, such as stable prices and a favorable balance of trade, should be sought without limitations or compromising the right to employment.

7. Day-care centers should be created so that working parents may pursue their work in peace of mind that their children are receiving adequate nurture and care.

8. Unemployment insurance coverage should be extended to cover all of the unemployed. Benefits should be expanded to meet the real economic needs of the jobless.²²

9. Fiscal and monetary policy should be utilized for the goal of creating a vital economy and full employment.²³

10. Production should be geared to meet coherent priority goals of the nation, e.g., mass transit, energy, housing, health, education, rural and urban renaissance, and the environment.

FOOTNOTES

¹ By inspection, *The Economic Report of the President, 1975* (Washington, D.C.: U.S. Government Printing Office, 1975), Table C-26, p. 279. The projections into the last half of the 1970's are quoted in Keyserling, "To Procrastinate or To Plan," *Viewpoint*, vol. 5, no. 2, Second Quarter, 1975, p. 3.

² Leon Keyserling estimates that between 1953 through 1974, we forfeited more than \$2.6 trillion worth of gross national product (1974 dollars) due to unemployment and underproduction. About \$700 billion worth of local, state, and federal revenues were thus lost. These revenues could have been used for both a rural and urban renaissance. See Keyserling, *ibid.*, p. 3.

³ Helen Ginsburg, *Unemployment, Subemployment, and Public Policy* (New York: New York University, School of Social Work; Center for Studies in Income Maintenance Policy, 1975), p. iii.

⁴ Leon H. Keyserling, *Full Employment Without Inflation* (Washington, D.C.: Conference on Economic Progress, 1975), p. 9.

⁵ Vera C. Perrella, "Young Workers and Their Earnings," *Monthly Labor Review* (U.S. Government Printing Office, 1971), vol. 94, July 1971, p. 6.

⁶ The Twentieth Century Fund, *The Job Crisis for Black Youth* (New York: Praeger, 1971), p. 29.

⁷ Report of a Special Task Force to the Secretary of Health, Education and Welfare, *Work in America* (Washington, D.C.: December 1972), p. 147.

⁸ *The Washington Post*, August 11, 1975, p. 2.

⁹ Quoted by Berkeley Rice, "The Worry Epidemic," *Psychology Today*, August 1975, p. 74.

¹⁰ *Ibid.*, p. 75.

¹¹ Dorothy D. Braginsky and Benjamin M. Braginsky, "Surplus People: Their Lost Faith in the Self and System," *Psychology Today*, August 1975, p. 70.

¹² For example, unemployment in the United States averaged about 4.8 percent in the years 1960-70. During this same period, unemployment in Germany was .6 percent; in Japan, 1.3 percent; in Sweden, 1.7 percent; in France, 2.0 percent; and, in Great Britain, 3.1 percent. On the average, unemployment in the U.S. was 276 percent higher than in these developed countries in the same time span. Also, when these developed countries attempted to control inflation by repressing the economic growth of the country, the result was less growth and more inflation. For a discussion, see Keyserling, *op. cit.*, p. 24.

¹³ See *Monthly Labor Review* (Washington, D.C.: U.S. Government Printing Office, July 1975), p. 75.

It follows from the definition that working one hour per week qualifies a person as being employed. Also, the definition excludes from unemployment those persons who become discouraged and do not believe there is work and do not seek work after four weeks of unemployment. In April, 1975, part-time unemployment reached 1.7 percent of the civilian labor force; concealed unemployment, those who became discouraged, reached 1.2 percent of the labor force. When these additions are made to the official unemployment rate in April of 8.9 percent, the result is a rate of approximately 11.7 percent or more than 10.5 million people. See Keyserling, "To Procrastinate or To Plan," *op. cit.*, p. 2.

Nor do the official unemployment statistics take into account the quality of jobs. There are many persons working full-time who still earn less than poverty line wages. In 1966, the Labor Department developed a subemployment index which included five groups: (1) the officially unemployed, (2) involuntary part-time workers, (3) an estimate of the male 'undercount' in the census, assuming half the missing males to be subemployed, (4) an estimate of the number of adult male discouraged workers, (5) full-time workers with wages under the poverty threshold. After conducting ten intensive surveys in inner-city poverty areas, the U.S. Department

of Labor discovered that subemployment ranged from 24 percent in Boston to 47 percent in San Antonio in these impacted areas. The average unemployment rate at the time was 3.7 percent. In 1970 the unemployment rate was 5 percent, a subsequent study by a Senate subcommittee discovered subemployment to range from a low of 50 percent in the poverty areas of St. Paul to a high of 73 percent in the poverty areas of San Antonio. This is the core of the urban crisis and it is worsening. For further discussion, see Ginsburg, *op. cit.*, pp. 94-114.

¹⁴ Keyserling, *Full Employment Without Inflation*, *op. cit.*, p. 4.

¹⁵ *The Economic Report of the President, 1975*, *op. cit.*, p. 96.

¹⁶ U.S. Congress, Joint Economic Committee, *Joint Economic Report on the 1974 Economic Report of the President, 93rd Congress, 2nd Session* (Washington, D.C.: U.S. Government Printing Office, 1974), p. 64.

¹⁷ *Economic Report of the President, 1975*, *op. cit.*, Table C-1, p. 249.

¹⁸ One billion dollars spent on defense creates 92,000 jobs; the same amount spent on meeting domestic needs by state and local governments creates 110,000 jobs. Testimony given by Bennett Harrison, "Testimony before Senate Subcommittee on Employment, Manpower, and Poverty, April 26, 1975" in *Comprehensive Manpower Reform, 1972: Hearings part 5* (Washington, D.C.: U.S. Government Printing Office, 1972), p. 1579.

¹⁹ Council of Economic Advisers, "The Employment Act: Twenty Years of Experience," in John A. Delehanty (ed.), *Manpower Problems and Policies* (Scranton, Pa.: International Textbook Co., 1969), p. 5.

²⁰ Quoted in Ginsburg, *op. cit.*, p. 5.

²¹ Ginsburg, *op. cit.*, p. 27.

²² Only 41.4 percent of those officially unemployed were covered by unemployment insurance in 1974. Those covered received a benefit which averaged 36 percent of average weekly earnings in covered employment. See *Economic Report of the President, 1975*, *op. cit.*, Table 36, p. 122.

²³ The cost of the present recession is astronomical. The Committee on the Budget of the U.S. Senate reported that the present recession is costing \$200 billion in lost product; \$53 billion in lost federal revenues; and a rise of \$15 billion in the cost of programs designed to aid the jobless. See U.S. Senate Committee on the Budget, *First Congressional Resolution on the Budget—Fiscal Year 1976, 94th Congress, 1st Session* (Washington, D.C.: U.S. Government Printing Office, 1975), p. 114.

HOUSE OF REPRESENTATIVES—Thursday, May 27, 1976

The House met at 10 o'clock a.m.

Rev. Michael D. Anglin, Church of Christ, Arlington, Va., offered the following prayer:

Almighty God, we come today not out of convention, but conviction of personal need. We recognize You as Creator and the genuine Ruler over Your world. As Your people, endowed with a freedom to choose between You and self, help those who sit in this Chamber to faithfully exercise their responsibility as elected representatives of the people of these United States by receiving wisdom and strength which is beyond themselves to face the challenging opportunities which today holds. May Your presence in their lives result in right choices and courageous consciences through which You will be done and Your name glorified. Then may they know the best has been done for the

people and that they have truly become Your representatives upon the Earth. In Jesus' name. Amen.

THE JOURNAL

The SPEAKER pro tempore (Mr. McFALL). The Chair has examined the Journal of the last day's proceedings and, without objection, announces to the House his approval thereof.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the amendments of the House with an amendment to a bill of the Senate of the following title:

S. 1466. An act to amend the Public Health Service Act to extend and revise the program of assistance for the control and prevention of communicable diseases, and to provide for the establishment of the Office of Consumer Health Education and Promotion and the Center for Health Education and Promotion to advance the national health, to reduce preventable illness, disability, and death; to moderate self-imposed risks; to promote progress and scholarship in consumer health education and promotion and school health education; and for other purposes.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill and concurrent resolution of the House of the following titles:

H.R. 12438. An act to authorize appropriations during the fiscal year 1977 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and

evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve of each Reserve component of the Armed Forces and of civilian personnel of the Department of Defense, and to authorize the military training student loads, and for other purposes; and

H. Con. Res. 646. Concurrent resolution providing for a conditional adjournment of the House from May 27 until June 1, 1976.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 12438) entitled "An act to authorize appropriations during the fiscal year 1977 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve of each Reserve component of the Armed Forces and of civilian personnel of the Department of Defense, and to authorize the military training student loads, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. STENNIS, Mr. SYMINGTON, Mr. JACKSON, Mr. CANNON, Mr. MCINTYRE, Mr. HARRY P. BYRD, JR., Mr. NUNN, Mr. CULVER, Mr. THURMOND, Mr. TOWER, Mr. GOLDWATER, Mr. WILLIAM L. SCOTT, and Mr. TAFT, to be the conferees on the part of the Senate.

REV. MICHAEL D. ANGLIN

(Mr. SISK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SISK. Mr. Speaker, it is with a great deal of pleasure that I present my local minister, Brother Mike Anglin of the Arlington Church of Christ, 20 North Irving Street, Arlington, Va. Brother Mike is doing an outstanding job for the church and in particular in connection with his work with young people.

Brother Mike has been a resident of the Arlington area for over 20 years and has been the minister at the Arlington Church of Christ since 1969. He began his preaching career in 1956. He attended the University of Virginia and received his degree from David Lipscomb College in Nashville, Tenn., in 1962. He subsequently received a master's degree from Harding Graduate School in Memphis and has done additional graduate work at the Virginia Theological Seminary and Abilene Christian College.

He is married to the former Ruth Kidwell and they have three children, Laura, David, and Melissa.

He has been on several Campaigns for Christ to Northern Ireland and is currently serving as a member of the board of directors of the Church of Christ Children's Home in Gainesville, Va.

Again, Mr. Speaker, it is an honor to present this fine gentleman to you.

GOVERNOR CARTER MAKES DEAL WITH MAYOR BEAME

(Mr. THONE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. THONE. Mr. Speaker, the Associated Press yesterday carried a very revealing dispatch from New York City. The whole story is told in the first sentence, which I quote:

Mayor Abraham D. Beame today endorsed Jimmy Carter for the Democratic nomination and the former Georgia governor promised to work out needed financing for the City of New York.

In other words, Governor Carter has made a deal with Mayor Beame. He is dealing with the American taxpayers' money. He is promising a further bailout of New York City if he is elected.

An editorial in this morning's Washington Post has these sentences:

Unless New York can begin to trim back the effects of its past generosity to its own employees, it seems unlikely that it will be able to find a way out of its fiscal problems. If it fails to do so, the ultimate bankruptcy of the city—and the difficulties that would bring upon it and the number of other cities—is almost inevitable.

This is the day of sunshine in government. It must apply to Jimmy Carter too. He must tell us all the details of the deal he has made to bail out New York City with Federal taxpayers' money.

PRINTING AS A HOUSE DOCUMENT THE CONSTITUTION OF THE UNITED STATES

Mr. BRADEMAS. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the concurrent resolution (H. Con. Res. 538) providing for the printing as a House document of the Constitution of the United States (pocket-size edition), with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the concurrent resolution.

The Clerk read the Senate amendment, as follows:

Page 1, line 5, strike out all after "printed" down to and including "Senate." in line 9 and insert: "two hundred and twenty-one thousand additional copies of such document for the use of the House of Representatives."

Is there objection to the request of the gentleman from Indiana. There was no objection.

ADJOURNMENT OF CONGRESS OVER MEMORIAL DAY HOLIDAY

The Chair laid before the House the concurrent resolution (H. Con. Res. 646) providing for a conditional adjournment of the House from May 27 until June 1, 1976, together with the Senate amendments thereto.

The Clerk read the title of the concurrent resolution.

The Clerk read the Senate amendments, as follows:

Page 1, line 7, after "occurs" insert: ", and that when the Senate adjourns on Friday, May 28, 1976, it stand adjourned until 11:00 o'clock a.m. Wednesday, June 2, 1976, or until 12:00 o'clock meridian on the second day after its respective Members are notified to reassemble in accordance with section 3 of this resolution, whichever event occurs first".

Page 1, after line 14, insert:

"Sec. 3. The President pro tempore of the Senate shall notify the Members of the Senate to reassemble whenever in his opinion the public interest shall warrant it, or whenever the majority and minority leaders of the Senate, acting jointly, file a written request with the Secretary of the Senate that the Senate reassemble for the consideration of legislation."

Page 1, strike out lines 15 to 18, inclusive, and insert:

"Sec. 4. During the adjournment of the two Houses of Congress as provided in section 1, the Clerk of the House and the Secretary of the Senate, respectively, are hereby authorized to receive messages, including veto messages, from the President of the United States."

Amend the title so as to read: "Concurrent resolution providing for a conditional adjournment of the House from May 27 until June 1, 1976, and of the Senate from May 28 until June 2, 1976."

The Senate amendments were concurred in.

A motion to reconsider was laid on the table.

CALL OF THE HOUSE

Mr. CHARLES H. WILSON of California. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

Mr. BRADEMAM. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 311]

| | | |
|-----------------|-----------------|----------------|
| Abzug | Eshleman | Mitchell, N.Y. |
| Andrews, N.C. | Fenwick | Montgomery |
| Andrews, | Fisher | Morgan |
| N. Dak. | Ford, Mich. | Mosher |
| Annunzio | Fraser | Murphy, N.Y. |
| Ashbrook | Gaydos | Nedzi |
| Ashley | Gialmo | Nichols |
| Beard, Tenn. | Gibbons | Nix |
| Bell | Goldwater | O'Neill |
| Bergland | Hamilton | Peyser |
| Bingham | Hansen | Pressler |
| Boggs | Harrington | Rees |
| Bolling | Harris | Rhodes |
| Breaux | Harsha | Riegle |
| Brodhead | Hays, Ohio | Rinaldo |
| Brooks | Hébert | Risenhoover |
| Brown, Calif. | Heckler, Mass. | Rodino |
| Brown, Mich. | Heinz | Rogers |
| Buchanan | Henderson | Rose |
| Burke, Mass. | Hicks | Rostenkowski |
| Burton, Phillip | Hinshaw | Roussell |
| Butler | Hutchinson | Santini |
| Carter | Jarman | Sarbanes |
| Cederberg | Johnson, Calif. | Scheuer |
| Clausen, | Johnson, Colo. | Schneebell |
| Don H. | Jones, Ala. | Selberling |
| Clawson, Del. | Karh | Stanton, |
| Collins, Ill. | Kemp | James V. |
| Conlan | Landrum | Steed |
| Conyers | Latta | Steelman |
| Danielson | Leggett | Steiger, Ariz. |
| Davis | McCollister | Stuckey |
| de la Garza | McDonald | Taylor, N.C. |
| Delaney | McKinney | Thompson |
| Dellums | Martin | Traxler |
| Derwinski | Matsunaga | Udall |
| Diggs | Meicher | Vanik |
| Drinan | Metcalfe | Walsh |
| Edwards, Ala. | Mikva | Waxman |
| Edwards, Calif. | Miller, Calif. | Weaver |
| Erlenborn | Mills | Young, Alaska |
| Esch | Mineta | |

The SPEAKER pro tempore. On this rollcall 309 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

PERMISSION FOR SUBCOMMITTEE ON WATER AND POWER RESOURCES OF COMMITTEE ON INTERIOR AND INSULAR AFFAIRS TO MEET DURING HOUSE DELIBERATIONS TODAY

Mr. KAZEN. Mr. Speaker, I ask unanimous consent that the Subcommittee on Water and Power Resources of the Committee on Interior and Insular Affairs be permitted to meet during the deliberations of the House today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

MR. RUSK SAYS CONGRESS HAS LOST POWERFUL LEADERS

(Mr. RONCALIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RONCALIO. Mr. Speaker, former Secretary of State Dean Rusk said in Houston yesterday that we have lost our powerful leaders in Congress and have become "535 minnows swimming in a bucket." Our failure, he said to the Fifth Circuit Judicial Conference, is a failure to communicate with the executive branch.

Rusk said that while he was Secretary of State under President Johnson, dealing with Congress meant talking to a few powerful Congressmen he referred to as "whales."

"We knew what the Congress would do or not do because they would tell us. That's because they could tell the Congress what to do," he said.

"As a political scientist I can make a rather strong case against the whale system," said Dean Rusk.

Mr. Speaker, I could think he could, considering what the "whale system" did in the sixties and considering the fact that for the first time the people in this Nation got to suspect that a President was lying to them, with the acquiescence of a few "whales" in Congress.

It is sad to observe this noted product of the executive branch, in speaking to an assemblage of heads of our judicial branch, so demean all the Members of this Nation's legislative branch.

CHAIRMAN OF COMMITTEE ON HOUSE ADMINISTRATION SHOULD RESIGN

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Speaker, a few days ago, the chairman of the Committee on House Administration, the gentleman from Ohio (Mr. HAYS), indicated that he made a speech that caused him the most trouble in his 28 years in the House. I have been here for 6 years, and this is the toughest statement I am about to make.

In any event, Mr. Speaker, I believe the time has come for the gentleman from Ohio (Mr. HAYS) to resign from his chairmanship of the Committee on House

Administration and to resign from the House as well.

I say that, Mr. Speaker, knowing full well that it is easy for me to stand here and make these statements. It is something that someone might even call a "cheap shot."

Mr. Speaker, having gone through my election on Tuesday in Kentucky, I know that the public's perception of what is going on in the House of Representatives or what they think is going on is a very palpable, present thing. It is not remote. It is very, very present and very real.

Mr. Speaker, the only way that I can see for the House to be relieved of this ignominy or to be relieved of this disapprobation that seems to be the prevailing view in the United States is to have some dramatic act, some dramatic event that would be a catharsis for this body.

Mr. Speaker, we have read the Wall Street Journal stories on Member double-billing. We have read of Member-billing for modes of transportation not actually used. We now have the situation of alleged mistresses on payrolls.

Mr. Speaker, I recognize the difficulty that the House has in working in this climate, but it seems to me that if we are to resume or to regain the esteem that I think we once had in these United States, there has to be something dramatic done. I do not think we can just sit back and wait for the Ethics Committee to rule.

Mr. Speaker, I had a press conference on Monday in my district dealing with the Budget Reform Act, which I think is the most important thing we have ever done around here and with LEAA.

However, the first question the press asked me was, "How many more Members of Congress have mistresses on their staff?" I said, "None, to my knowledge. And I really do not know whether the charges against Mr. HAYS are accurate." This shows the depth of the problem.

Mr. Speaker, it seems to me that there has to be something dramatic done, and I think the House as a whole needs to make a move.

Mr. Speaker, I thank the Members for this time. I hope that the Members who have listened to me understand that I am not saying this idly nor with any intent to hurt Chairman HAYS.

TAKING ISSUE WITH THE VIEWS OF THE HONORABLE ROMANO MAZZOLI

(Mr. RUSSO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RUSSO. Mr. Speaker, I could not help but stand here, in listening to the comments of my friend, the gentleman from Kentucky (Mr. MAZZOLI), and disagree with the statements he made.

It seems to me that by making those statements, he implies that all of us in the House of Representatives have mistresses on our payrolls or are misappropriating funds.

I think it is horribly unjust for the gentleman from Kentucky to make such a statement.

I think that if we are really interested

in doing something about our public image, we ought to spend more time in our districts talking to our constituents and explaining to them what we are doing here in Congress rather than doing some of the things we have, such as using delaying tactics in the House of Representatives.

Mr. Speaker, if we want to be constructive, let us go home and take that message to the people and not ask that the chairman of the Committee on House Administration, the gentleman from Ohio (Mr. HAYS), who has his own problems, to resign.

Mr. Speaker, I am sick and tired of people saying that politicians are guilty until proven innocent. In this country the reverse principle is true: Everyone, including Members of Congress, are innocent until proven guilty.

Mr. Speaker, why should our political figures be treated differently from the rest of the people in this country. As public officials, we do give up certain prerogatives but one thing we do not give up and that is our constitutional rights to due process under the law.

What my good friend from Kentucky seems to imply is that if an allegation is made against any Member of this body, then that Member is automatically presumed guilty and should resign for the good of the body.

I am in no position to judge the innocence or guilt of Chairman HAYS but I did take an oath to uphold the Constitution and certainly feel that Chairman HAYS is entitled to due process of the law.

COAL SLURRY PIPELINE—II: ENERGY VERSUS TRANSPORTATION ISSUE

(Mr. SKUBITZ asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. SKUBITZ. Mr. Speaker, yesterday I made a statement before the House concerning a so-called coal slurry pipeline bill, H.R. 1863, which can be found on page 15521 of the Record. This legislation would grant Federal powers of eminent domain to coal slurry pipelines.

Now, today, I want to address the problem of whether coal slurry pipelines relate to energy or transportation. Since under the rule—a 1-minute speech must be limited to 300 words—I am extending my remarks to discuss the subject of how coal slurry pipelines relate to energy or transportation more in detail at this time. However, I wish to point out that a coal slurry pipeline cannot produce a kilowatt of energy. The legislation before the Interior Committee simply represents a plan to superimpose an additional transportation mode on an existing system.

I think it is clear that in the legislation under consideration we are not talking about a measure to increase the supply of energy—it would not do that. We are talking about a measure to fill an imagined gap in the transportation system—there is no gap.

We are, I suggest, talking about legislation to grant a special and totally un-

precedented privilege to a small group of promoters seeking to use our legitimate concern about the Nation's energy needs as an opportunity to pocket some fast bucks.

PROVIDING FOR CONSIDERATION OF H.R. 12169, FEDERAL ENERGY ADMINISTRATION AUTHORIZATION AND EXTENSION

Mr. SISK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1220 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1220

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12169) to amend the Energy Policy and Conservation Act to authorize appropriations for fiscal year 1977 to carry out the functions of the Federal Energy Administration, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from California (Mr. SISK) is recognized for 1 hour.

Mr. SISK. Mr. Speaker, I yield 30 minutes to the gentleman from Tennessee (Mr. QUILLEN) pending which I yield myself such time as I may consume.

Mr. Speaker, the rule I believe is quite clear if the Members followed the reading of the resolution by the Clerk. It is a 1 hour open rule and there are no waivers involved. Any and all amendments, considered to be germane, of course, would be in order under the 5-minute rule after the 1 hour of general debate which, of course, will be controlled by the Committee on Interstate and Foreign Commerce.

In view of the fact that I understand there is going to be some opposition to the rule, Mr. Speaker, I would appreciate it if Members would take note that we would hope to move rather rapidly on this.

The bill made in order by the resolution, H.R. 12169, extends the term of the Federal Energy Administration Act, currently due to expire on June 30th of this year and extends it to September 30, 1976, and provides specific legislative

authorization for the appropriation of moneys for the Federal Energy Administration up to the end of fiscal year 1977.

The Committee on Interstate and Foreign Commerce settled on a 1-year extension of this authorization in order to permit the reevaluation of budgetary levels on the basis of continuing oversight hearings during the coming fiscal year. Specific consideration was given in the course of this legislation to a prohibition against extensive reprogramming of the funds because of the fear expressed by the administration that the rigidity of any such prohibition might stand in the way of the responsibilities which have been given to the FEA by the Congress.

In concluding my statement, Mr. Speaker, I understand we did have appearances before the Committee on Rules by some Members of the Congress who are concerned about certain matters of jurisdiction, particularly as it concerns the Government Operations Committee. They will be presenting their position very shortly. I expect to yield to the gentleman from Indiana (Mr. FIRTHIAN) and the gentlewoman from Colorado (Mrs. SCHROEDER) so they may present their particular positions. Pending that, Mr. Speaker, I reserve the balance of my time.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the rule providing for the consideration of H.R. 12169, the Federal Energy Administration authorization and extension. This is a 1-hour open rule, and contains no waivers of any points of order.

I strongly support this extension of the Federal Energy Administration and urge my colleagues to reject any attempts which may be made to reduce or weaken in any way its ability to carry out its vital functions, or to disperse its responsibilities to other agencies of the Federal bureaucracy. We must support the FEA and its essential role in our efforts toward achieving energy self-sufficiency for the American people.

H.R. 12169 extends the charter of the FEA, which is now due to expire on June 30 of this year, until September 30, 1979. The bill also provides an authorization of \$44 million for the transition quarter and \$212 million for fiscal year 1977.

Mr. Speaker, the FEA was created in 1974 by the Federal Energy Administration Act as a necessary and sensible congressional response to the severe energy crisis created by the arab oil embargo. It was hoped then that the Nation's energy problem would be short-lived, and the FEA was therefore given a mandate of only 2 years.

We all now realize, however, that America's energy problems are not short-term, and that the oil embargo brought home to all Americans a harsh lesson we must never forget. Rather than short-term in nature, our energy problems, on the contrary, are here to stay. Our entire national energy policy, and particularly our efforts toward establishing self-sufficiency in energy will remain very high

on the list of our national priorities for the foreseeable future.

We must bend every effort toward achieving a national energy policy which is going to produce energy self-sufficiency and independence from the exorbitant prices of the unreliable sources of foreign oil.

The Federal Energy Administration has played a key role in our efforts to achieve this goal, and to establish this energy policy. A continuation of the policy, regulatory, and resource development responsibilities of the FEA are essential to the success of this energy policy, and the agency has discharged its responsibilities in a manner which has earned the support of the Congress.

The charter of the FEA must be extended, as provided for in H.R. 12169, and we must reject any efforts to destroy this agency or to transfer its functions and duties to other scattered and uncoordinated agencies and offices of the bureaucracy.

Mr. Speaker, I strongly support the extension of the FEA, and the necessary authorizations contained in H.R. 12169. The administration also supports the extension but does object to certain provisions of the bill, and in particular objects to authorizations above its requests in three areas.

Under this rule, however, amendments dealing with these objections may be offered, as well as other amendments which are likely to be offered by minority members of the Committee on Interstate and Foreign Commerce.

Mr. Speaker, I urge the adoption of the rule.

Mr. BROWN of Ohio. Mr. Speaker, will the gentleman yield?

Mr. QUILLEN. I yield to the gentleman from Ohio.

Mr. BROWN of Ohio. I concur in the gentleman's statement and share his support of the rule and also his support of the extension of the FEA, but because of my great respect for the gentleman in the well and because of my hope that he will offer me support for two amendments, I will ask him if he does not feel that we ought to clean up this legislation just a little bit and knock out the \$2.9 million for a duplicative program in solar energy that would start a whole new program in FEA, when we already have a similar program in ERDA, and if he would not also want to stick with the OMB recommendations and knock out the \$37.4 million, I believe it is, that was added to the conservation portion and was not requested by the administration.

Mr. QUILLEN. I think the gentleman from Ohio has made a good point. That is one reason the rule should be adopted, to give the House every opportunity to vote on the amendments which will be offered. In my statement I emphasized my support for the extension of the FEA and the authorization, but as I recall I did not mention any amount, and the gentleman has made a good point. I certainly will take a close look at the amendments that he is going to offer.

Mr. Speaker, I reserve the remainder of my time.

Mr. SISK. Mr. Speaker, I yield 5 minutes to the gentlewoman from Colorado (Mrs. SCHROEDER).

CALL OF THE HOUSE

Mr. McCORMACK. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

Without objection, a call of the House is ordered.

There was no objection.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 312]

| | | |
|-----------------|-----------------|----------------|
| Abzug | Fenwick | Nichols |
| Andrews, N.C. | Fish | Nix |
| Andrews, | Fisher | O'Neill |
| N. Dak. | Ford, Mich. | Peyser |
| Annunzio | Fountain | Pressler |
| Ashbrook | Fraser | Rees |
| Ashley | Gaydos | Rhodes |
| Beard, Tenn. | Gialmo | Riegle |
| Bell | Gibbons | Rinaldo |
| Bergland | Gilman | Risenhoover |
| Bingham | Gradison | Rodino |
| Boggs | Hamilton | Rogers |
| Bolling | Harrington | Rose |
| Breaux | Harsha | Rostenkowski |
| Brodhead | Hayes, Ind. | Ruppe |
| Brooks | Hays, Ohio | Sarbanes |
| Brown, Calif. | Hébert | Scheuer |
| Buchanan | Heckler, Mass. | Schneebeli |
| Burleson, Tex. | Hicks | Selberling |
| Burton, John | Hinshaw | Shuster |
| Burton, Phillip | Hutchinson | Stanton |
| Butler | Johnson, Calif. | James V. |
| Carter | Johnson, Colo. | Steed |
| Cederberg | Jones, Ala. | Steelman |
| Claawson, Del. | Karth | Steiger, Ariz. |
| Conlan | Krueger | Stuckey |
| Conyers | Landrum | Sullivan |
| Danielson | Latta | Thompson |
| de la Garza | McCullister | Traxler |
| Dellums | McDonald | Udall |
| Derwinski | Matsunaga | Vanik |
| Diggs | Melcher | Vigorito |
| Drinan | Mikva | Waxman |
| Edwards, Ala. | Millford | Weaver |
| Edwards, Calif. | Miller, Calif. | Wilson, C. H. |
| Erlenborn | Mills | Wolff |
| Esch | Montgomery | Wyder |
| Eshleman | Morgan | Young, Alaska |
| Evins, Tenn. | Mosher | |

The SPEAKER pro tempore. On this rollcall 317 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

PROVIDING FOR CONSIDERATION OF H.R. 12169, FEDERAL ENERGY ADMINISTRATION AUTHORIZATION AND EXTENSION

The SPEAKER pro tempore. Prior to the point of order of no quorum, the gentleman from California (Mr. SISK) had yielded 5 minutes to the gentleman from Colorado (Mrs. SCHROEDER). The Chair now recognizes the gentleman from Colorado (Mrs. SCHROEDER).

Mrs. SCHROEDER. Mr. Speaker, I rise in opposition to the rule. I am sure the Members are all wondering what kind of a nut would oppose an open rule. I have very, very, very rarely ever voted against any rule, and if I ever have, the rule has been closed.

So why am I here, and what is all this about?

Mr. Speaker, I feel very strongly about sunset legislation and very strongly about trying to get the bureaucracy under control. The FEA was created 3 years ago by the Committee on Government Operations. They did some very wise things. They put some reverter clauses

in the FEA act so the other agencies where the authority came from would get them back. The FEA, under the legislation that we passed, will expire on June 30. We have a month to look at this. There has been all sorts of controversy about FEA, and I could rant and rave and go on and on. We have all heard about it. I am sure the committee has attempted to do some of these things.

On the Senate side, the Committee on Government Operations has dealt with this. On our side they have not looked at it.

One of the reasons I would like to defeat the rule is because I feel we should let the FEA die and some of its regulatory functions and other vital functions be transferred to other agencies. I am making my own judgment, and I have put my own thoughts in a substitute amendment which I will offer. But I think it is much better to have the committees look at it, and think about it and debate it, rather than just offering my substitute on an up and down vote.

I think it is important that we not be faced with a decision of whether or not to kill the FEA or keep the FEA, but we are going to be forced into that position today, with this rule. We are precluded from trying to determine where some of those functions should go through the committee system but rather sitting as a body of 435. We could make more sense if we filtered by substitute through the committee process first.

So I am in the position of saying that I really hope that the Members will look at this rule very hard. We have a full month to consider what we are going to do with the FEA. We are getting a lot of criticism. Maybe many of the Members saw the Christian Science Monitor yesterday. They have been running a series on Government bureaucracy and why Congress cannot deal with it. They point out that in the last 15 years we have created 234 Government agencies. We have been totally unable to take any of them down.

I think we are apt to see changes. Who knows who will be President in November? Do we want to mandate now that he must have this bigger and better FEA for 39 months, with a bigger and better staff because President Ford is now recommending that we triple the FEA's budget?

What happened here is what usually happens. We get down to the last minute and everyone is saying that 1 month from now the FEA will expire so we must act now. This is pressure, pressure, pressure. We are told we must do it, we cannot let the FEA go out of existence. The former head of the agency, Secretary Simon, says, let it go out of existence. So does the GAO.

Mr. Speaker, I think there is some authority in the agency that we need to retain, but why can we not consolidate those in the other agencies? Why can they not revert back to the agencies where they were?

One of the proposals I would make in my substitute would be that the regulatory functions of the FEA be transferred to the Federal Power Commission. I am not 100 percent positive that is where

they ought to go. I am just here trying to determine where they should go. Therefore, I would prefer to see this House vote down the rule and have the proper committees look at my substitute. We have a month to look at it. I would prefer to have the committees figure out what we should do. If we do not act in this case, I do not think any of the sunset provisions will work. All we do is say that every 5 years the bureaucracies will have to come back in here for a renewal.

The argument will always be that we only have a few days left, that it is too late, that we cannot kick it around any longer, and that we will look at it again in 5 years after it comes in again. We keep showing that syndrome.

This is one of the toughest things that we have to do. We are always very, very afraid to take these things apart.

Mr. Speaker, I think there are other issues in the bill that we have to look at. There are some jurisdictional questions that will be addressed by other Members, I am sure, and those questions are dealing with other committees. I think what we have to do is very tough. We all hear the people are getting angry with big government and we should act now.

I just want to summarize by saying that I urge a vote against the rule because I think this is the one time that we can show the people. We created this thing 3 years ago, and it was to deal with a temporary crisis situation. The temporary crisis is now gone. The energy crisis is still there, however, in the big picture, but I do not think this is the proper agency to handle these matters, although some reforms have been made. I think we can transfer back to the other agencies some of the functions that we think are vital.

I believe we should vote down the rule. We have a month to work on it. Then if we are serious about this sunset legislation, we can indeed bring that up without wracking our brains now about something we have no intention to implement.

So, I ask the Members, please do think very, very seriously about this when you vote on the rule. The issue is not whether the rule is open or closed. The issue is we can take another month, legislate responsibly, and not allow ourselves to be steam-rolled into thinking our only option is to extend the FEA today. Let us look at this one more time, and then maybe we can decide we can take apart a Government agency we put together, and not just continue on creating more and more and more Government agencies because the others do not work.

Mr. SISK. Mr. Speaker, I yield 5 minutes to the gentleman from Indiana (Mr. FITHIAN).

Mr. FITHIAN. Mr. Speaker, we have followed the discussions in the Committee on Rules with care over the past 2 weeks with regard to this particular piece of legislation. We asked for a rule which would make in order an alternative to the extension of the Federal Energy Administration for 39 months.

Yesterday afternoon, on a reasonably close vote of 8 to 5, the Committee on Rules voted instead in favor of the mo-

tion offered by the gentleman from California (Mr. SISK) that a simple 1-hour rule be granted.

Mr. Speaker, I have never opposed an open rule in the 2 years I have been here, so I am a little uncomfortable speaking for the opposition and those Members who are opposed to an open rule. But in fact, if we are to decide upon two or three very substantive questions, then the rule must be voted down. Let me speak briefly to those substantive questions.

First of all, there is some question about the germaneness of an amendment which would terminate the Federal Energy Administration, and hence those who would prefer to have that option may well throughout the arguments today be denied that opportunity.

Second, there are those who seriously question the jurisdiction of the Dingell subcommittee in this particular area on two grounds: No. 1, that those governmental reorganization and administrative organization questions are properly a part of the jurisdiction of the Committee on Government Operations.

I totally agree with that argument. I think we cannot start down the road of having the question of the life or death or termination or alteration of an agency left to every legislative jurisdiction of the agency or committee in the Congress.

Mr. Speaker, there is only one committee which should be dealing with this in terms of whether or not we phase out or whether or not we carry out the mandate of this House, which was that the Federal Energy Administration be a temporary body.

Second, I think that anyone who looks at the bill before us today and who is aware of all of the money that we have appropriated in this House for ERDA to deal with the solar energy question and the matter of research and development will surely agree that we are now setting off, if this bill passes today, in a direction that insures absolute duplication. It insures duplication because it starts another Government agency, another bureaucracy, working on solar energy.

I know that we can say that we can hem it in. We can have them only work on implementation, and we can have the others work on research. However, any student of bureaucracy knows that once one starts a Federal bureaucracy and brings it into an area and gives it additional jurisdiction, it just continues to grow and grow and grow.

Mr. Speaker, that is what this bill will do. The Committee on Science and Technology has not been offered an opportunity to deal with this question as they should.

Mr. Speaker, I would argue this. In the Committee on Rules yesterday, the gentleman from California (Mr. SISK), speaking on behalf of Chairman DINGELL, said that, rather than grant a rule which would open up a substitute to this bill which would phase out the Federal Energy Administration and provide for the allocation of the mandated function which has to be provided for, rather than grant a rule like that, the chairman of the committee bill today would prefer that no rule be granted and that we give ourselves 2 to 3 weeks for the Committee on Government Operations to look at this.

That is all I am asking for this morning. I am asking for a simple step to defeat the rule and then allow the Committee on Government Operations to take a look at the reorganization question over the next 2 or 3 weeks and then allow the Committee on Science and Technology to deal with the question of solar energy.

Mr. Speaker, I am asking nothing more than this. I think that is a very simple request. I think we should vote down the rule.

I could make a speech specifically against the Federal Energy Administration. I do not think it has done its job. I do not think it has a single claim on this House for continued life, but I am arguing now on the rule; and I am arguing that the simplest way to dispatch this is to vote down the rule and give the science and technology people 2 or 3 weeks to work on that section and give the Committee on Government Operations 2 or 3 weeks to work on their section.

I understand that the leadership was divided in its opinion as to where this bill should go. I understand that the gentleman from Texas (Mr. BROOKS) did ask that the Committee on Government Operations have some say on this bill, and that was turned down.

Mr. Speaker, I urge the Members to vote down the rule, even though it is an open rule.

Mr. SISK. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. Mr. Speaker, I rise in support of the rule and in support of the legislation which my committee has reported out.

I would not say that the FEA has been ideal by any means; but if there were not this FEA, we would have to set one up because there are important questions of energy policy—of regulation, allocations entitlements, et cetera, mandated by other laws that require one agency to handle them for the Federal Government in a coordinated manner.

Mr. Speaker, I think the money we put in for dissemination of existing solar energy technology is very important. There has to be a point at which research and development stops and we get these technologies out in the field. The scientists in ERDA are not trained or equipped to carry out this job.

There was an agreement formalized between Dr. Seamans and Mr. Zarb on the establishment of ERDA wherein it was clearly agreed that ERDA was going to have responsibility for research and development, and then when products have been researched and developed and were ready to be put out on the market, dissemination would be an FEA function. I think that commercialization function ought to be in another agency. I include this FEA-ERDA agreement at this point in the debate:

FEDERAL ENERGY ADMINISTRATION

Washington, D.C., April 30, 1976.

MEMORANDUM FOR GENERAL COUNSEL, ASSISTANT ADMINISTRATORS, OFFICE DIRECTORS, REGIONAL ADMINISTRATORS

From: John A. Hill.

Subject: FEA-ERDA memorandum of understanding.

Frank Zarb and Robert Seamans have signed the attached Memorandum of Under-

standing (MOU) between FEA and ERDA. The document recognizes that the two Agencies have complementary statutory authority, but that some program areas are of mutual interest. Now that this formal mechanism exists for coordinating the activities of the two Agencies, it is essential that all you and your project managers become familiar with the document.

The Steering Group established by the MOU will be chaired by Robert Fri, Deputy Administrator of ERDA, and myself, Thomas E. Noel, FEA, Roger LeGassie and Gene Manella, ERDA, will also be permanent members of the Group.

Our first Working Groups, which will be announced shortly, will deal with the Solar Energy Government Buildings Program and the Buildings Conservation Programs. Agreements resulting from these Working Groups will be circulated to you immediately for appropriate dissemination.

Attachment.

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL ENERGY ADMINISTRATION AND ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

INTRODUCTION

The Federal Nonnuclear Energy Research and Development Act of 1974 (P.L. 93-577), the Energy Reorganization Act of 1974 (P.L. 93-48), the Energy Policy and Conservation Act (P.L. 94-163), and other energy statutes legislate general cooperation among Federal Agencies with respect to solving the National energy problem. This Memorandum of Understanding formalize the corresponding working relationship between the Federal Energy Administration (FEA) and the Energy Research and Development Administration (ERDA) in all commercial and civilian energy activities, but does not pertain to ERDA's National Security responsibilities or programs or to functions assigned specifically by law exclusively to FEA or ERDA.

I. Policy

Recognizing common energy goals and a very close relationship of the associated responsibilities of FEA and ERDA, it is agreed that the two Agencies will work together and in a mutually supporting way in the formulation and execution of Federal strategies, plans, and programs to develop and utilize new energy sources and to effect energy conservation. It will be the policy of the Agencies that this will be done in a way which recognizes the statutory responsibilities and mission of each Agency and utilizes the capabilities and facilities of each to the greatest possible extent, making these available to each other for the planning and execution of activities. In accordance with the provisions of applicable statutes, FEA will be recognized as having primary responsibility with respect to all matters of pricing, allocation, end-use, and general industry regulation, except where ERDA has statutory responsibility in the nuclear area. FEA will also be the primary Agency in developing a coordinated National policy combining incentives to increase production and the efficiency of energy use. ERDA will be recognized as having primary responsibility with respect to matters involving energy research and development of new technology.

II. Policy management and review

A. In order to provide Agency management review and guidance in translating the policy and guidelines of subsequent sections into specific action, the Deputy Administrators of the Agencies will serve as co-chairmen of an FEA-ERDA Steering Group. As required, Assistant Administrators, Regional Administrators and others may be appointed to the Steering Group. The Steering Group will meet as necessary, but at least quarterly, and will name working committees in specific areas. At their discretion, the Deputy Administrators may delegate the authorities relating to this understanding to the working committees.

B. It will be the responsibility of the Steering Group to define those programs and projects to be handled separately or jointly under provisions of Sections III.D and III.E below.

C. As specific planning and implementation actions are detailed and approved by the Steering Group, they will be documented in the form of Interagency Agreements which will supplement this Memorandum of Understanding. Such Interagency Agreements will also provide the means for definition of responsibilities in the areas of technical work, interpretation of policy, and commercialization programs.

D. As required but at least annually, the Administrators of the Agencies will meet to review the scope and progress of activities covered by this Memorandum of Understanding and associated Interagency Agreements.

E. Interagency personnel contact at the working level will be encouraged and the Steering Group will provide for maximum familiarity of the agreements among the staffs of both Agencies. The Steering Group will also encourage all program officers to raise suspected overlaps and gaps in complementary Agency programs to the Steering Group for resolution.

III. GENERAL GUIDELINES

A. The Steering Group will provide for maximum coordination of all new policy actions and technical initiatives to ensure that research and development activities and supply and demand programs are compatible to the greatest possible extent. Both Agencies will continue to use the Energy Resources Council for coordination of board goals, objectives, and major legislative actions. The Steering Group will use its authority to provide the maximum coordination of budget requests. In all cases of proposed legislation, the Steering Group will ensure full consultation in developing the positions of the two Agencies; to the extent practicable, all Congressional testimony will be similarly coordinated. This procedure will complement but not supplant existing procedures whereby legislative proposals are developed by the Executive Branch.

B. Recognizing the differences in planning requirements of the Agencies, it is agreed that each will conduct its planning and analysis efforts to include: (1) sharing of data, models, and techniques to the greatest possible extent; (2) the broadest exchange of information; and (3) sharing of results. Special attention will be given to the consistency of methodology in developing energy forecasts made by the Agencies. Both Agencies recognize as a goal the technical compatibility of all data bases maintained by each, and will work toward that end.

C. In recognition of the mutual interest of the two Agencies as stated in Section E below, it is agreed that the field efforts of both will be closely coordinated. This will be done in order to maximize the effectiveness of State and local liaisons, and to smooth the transition of technically oriented programs into general use. In order to facilitate this cooperation, the Agencies, when possible and to the extent authorized by law, will seek to make resources available to support each others programs.

FEA will provide assistance to ERDA, including administrative support, in the establishment of any Regional Offices which may be created in the ten Regional cities, to the extent authorized by law.

D. The Agencies recognize that certain programs and projects have been assigned by statute to one Agency or derive directly from such statutory assignments of responsibility.

1. For FEA statutory program and project responsibilities, it is agreed that:

a. ERDA will provide technical support and assistance, when requested.

b. In those areas where technical developments are required and to the extent that

ERDA has the capability and is the best qualified organization for the specific task. FEA will assign, to the extent authorized by law, to ERDA the lead responsibility for the developments.

2. For ERDA statutory programs and projects, FEA will provide:

a. Access to results of appropriate data, studies, and analyses of the energy industry and energy users, to the extent permitted by law.

b. Guidance with respect to matters of energy resource availability, pricing, allocation, and industry regulation.

c. Appropriate contributions to the annual revision of the comprehensive plan for energy research, development, and demonstration as required by P.L. 93-577.

3. In those areas where non-technical arrangements are prerequisite to widespread or large scale use of energy technology, FEA and ERDA will establish the lead responsibility for such arrangements unless such responsibility is otherwise provided by law.

4. Joint planning, as described in Section E below, will be undertaken as appropriate. Joint planning for the commercialization of energy technologies will be conducted concurrently with technical development.

E. The Agencies recognize that they will share an interest in many resource development and conservation programs, both long- and short-term, that require energy policy analysis, technical development, removal of institutional barriers, and/or application of incentives to achieve market penetration. In these programs of mutual interest, the Agencies agree to joint planning, leading to the definition and establishment of appropriate projects and assignment of responsibility. Toward these ends, the Agencies agree that:

1. They will jointly establish the scope, objectives, and relative priority of projects within each program, using mutually consistent criteria.

2. They will determine the contribution each Agency can make to the successful completion of each project, and will provide the necessary support to make that contribution.

3. They will jointly establish the lead Agency for each project. This determination will be based on factors including the origin and history of the project, the statutory authority and funding supporting the project, the skills and experience needed to manage the project, and the outside relationship needed for the project. Duplication and overlap will be avoided. Recognizing the capabilities of each Agency, it is intended that some programs will be worked on concurrently by both FEA and ERDA. It is also recognized that the development of responsibilities in a sequential manner may mean a shift in the lead Agency.

F. The Agencies agree to undertake joint or coordinated, as appropriate and authorized by law, public information and education programs for the activities in the sections above. This coordination will extend to programs of technology transfer and specialized education as well as general information transferred.

IV. Program funding

The specific details of the levels of support to be furnished one Agency by the other with respect to funding will be developed in specific Interagency Agreements. In any event, FEA and ERDA will provide each other mutual support in budget justification and hearings before OMB and Congress with respect to programs on which the Agencies collaborate.

V. Management arrangements

This Memorandum of Understanding envisages direct communication between FEA and ERDA program officials involved in managing the performance of cooperative work. Program or project plans with appropriate detail will serve as program or project documentation and will set forth the specific arrangements under which program implemen-

tation will take place in those instances of project work involving contractual participation by commercial contractors or other organizations outside of FEA or ERDA. Such project plans will set forth necessary interface arrangements and procedures for handling various levels of Governmental decisions. Normally such management arrangements will clearly set forth the decisions and delegation levels considered appropriate for each project and clearly describe the management and reporting coordination processes between FEA and ERDA.

VI. Procurement policy

Program and project activities undertaken by FEA and ERDA or vice versa under the provisions of the Memorandum of Understanding may involve contractual arrangements with non-governmental entities, organizations, or institutions. When such arrangements are necessary, they shall be conducted in a manner consistent with the policy, regulations, statutory authority, and procedures of the contracting Agency.

VII. Public information coordination

Timely release of information to the public regarding projects and programs implemented under this Memorandum of Understanding will be by mutual agreement between FEA and ERDA Steering Group representatives.

VIII. Amendment and termination

A. This Memorandum of Understanding may be modified or amended by written agreement between FEA and ERDA.

B. This Memorandum of Understanding may be terminated by mutual agreement of FEA and ERDA.

IX. Effective date

This Memorandum of Understanding is effective when executed by the Administrator of each Agency.

The House would do well to support this open rule and the legislation we reported, including the solar energy dissemination and commercialization program to get the solar technology which is fully developed out in the field where it will be used.

Mr. Speaker, I hope that the House will support this rule.

Mr. HARKIN. Mr. Speaker, will the gentleman yield?

Mr. OTTINGER. I yield to the gentleman from Iowa.

Mr. HARKIN. I understand that the gentleman from New York is pointing out the division of these functions. There is nothing in the law which says that ERDA cannot do that. ERDA can do it, and that is where I think it ought to be. There is nothing in the law that says it cannot do so. They are right now engaged in demonstration projects.

Mr. OTTINGER. ERDA is a collection of scientists and they have no expertise whatever in the actual marketplace.

Mr. HARKIN. Will the gentleman yield further?

Mr. OTTINGER. I decline to yield further.

Mr. Speaker, it seems to me that the people who are experts in getting this out into the field, priority developed technology and letting people know about it, really ought to be in charge of the commercialization rather than a group of scientists whose expertise is solely in research and development. That is what we are developing within FEA at the present time and I think it is very important that that be maintained.

Mr. QUILLEN. Mr. Speaker, I yield

3 minutes to the gentleman from Idaho (Mr. SYMMS).

Mr. SYMMS. Mr. Speaker, I think the thing that anyone on this Earth ever sees to eternal life is a Government bureaucracy and a Government agency.

I have heard two sets of arguments here, but I am going to vote against this rule today. I believe the reason that we should vote against the rule today is so as to kill this thing today. Then if somebody brings back another rule in another 3 weeks or so, I hope we will be able to vote that down also.

Mr. Speaker, there is one thing that we always tell our constituents, and I think this is true of the Members on both sides of the aisle, when we are on the campaign trail, or work in our districts, and that is we are always saying that we oppose bureaucracy and we are against Government waste. Now here is this thing before us today where we have an opportunity to follow through on that and to vote down the rule. If we do that, then I would ask the Committee on Rules not to grant another rule for it. Let us let it die a natural death at the end of June or July, or whenever that is going to be.

Mr. Speaker, there are several very compelling reasons why we should do this. First of all is the fact that there is a total lack of competition between the major oil companies today. If any of the Members were to go and talk to the small retailers or the small wholesale jobbers, they will find that we do not have competition existing with—for instance, I know a Texaco jobber who says that Conoco used to offer him loads of surplus fuel at a discount—before FEA. This no longer happens because FEA has written regulations on this restricting competition so that the big companies do not have to be competitive with each other and, instead, they charge the going price and don't worry about bidding against each other, and are really operating outside of the free enterprise competitive system. Instead of that we now have more or less a controlled enterprise system.

What has FEA accomplished since 1972? My friend from Tennessee mentioned that we had an embargo at that time that was placed on this country. At that time we were importing 30 percent of our petroleum products. Now, after 3 years of the FEA being in operation, we are importing 50 percent, slightly over 50 percent of our petroleum products.

So it looks to me, Mr. Speaker, that the record is very clear that FEA has never put any more oil into the market, and in the process of what they have been doing in trying to solve the fuel shortage they have succeeded in only making more and more paperwork for the people who are truly trying to provide petroleum products for the American people, and I must say FEA is now part of the problem not part of the solution.

So, Mr. Speaker, I think that all of us today would be very well advised to vote the rule down. Then next week, if it goes back to the Committee on Rules and they are asked for another rule and it is granted, that we vote that rule down

again. Then if they come back with another rule after that, then we should vote that rule down again.

For once let us let this Congress do something for the people of America instead of always doing something to the people of America. Because I have never seen the FEA do anything except appropriate money from private citizens to pay a bureaucracy to interfere with the marketplace to the point where now we do not have competitive free enterprise, and after all in the competitive market system it is the consumer who is the beneficiary of the market system.

Mr. SISK. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. MAHON).

Mr. MAHON. Mr. Speaker, in this legislation we are confronted with a very troublesome issue. There are those in the House who oppose the FEA, and who seem to feel that if the FEA is abolished, the shackles which discourage production would be removed from industry. On the other hand, there are those who feel that the FEA is not sufficiently oppressive and restrictive against the energy industry and that FEA should be abolished in order to permit other existing agencies of government to take over the task of regulation.

Unfortunately, Mr. Speaker, if we abolish the FEA, we do not abolish the energy laws unwisely enacted and which are the basis of much of our difficulty. If the FEA is abolished, we still will have to deal with existing legislation and regulatory roadblocks.

The question then is: Shall we vote for this rule; shall we continue the FEA?

I want to express my view that if we could abolish the energy legislation which has severely hampered our energy efforts by voting against FEA, I would strongly favor such a course.

We should not worsen an already bad situation and there is room for doubt as to what our course should be.

As for myself, I shall vote against the rule as a matter of protest against legislation which has hampered our energy efforts. Ultimate action on the pending measure can await further consideration and debate.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. QUILLLEN. Mr. Speaker, I yield 5 minutes to the gentleman from Illinois (Mr. ANDERSON).

Mr. ANDERSON of Illinois. Mr. Speaker, I rise in support of the rule. Let me say at the outset that the gentleman from Colorado (Mrs. SCHROEDER) and the gentleman from Indiana (Mr. FITHIAN) have no monopoly of concern when it comes to the urgent need for reforming the various regulatory agencies of the Federal Government, one of which is, of course, the FEA. I feel very strongly about the need for regulatory reform.

As the gentleman from Texas (Ms. JORDAN) knows, she and I have cosponsored legislation which to date I think has attracted about 60 cosponsors, a bill which would compel both the President and the Congress on a systematic basis to address themselves to the need to re-

organize not just the FEA but every one of the some 34 major regulatory agencies of the executive branch. But I think there is a proper way to go about this.

I am sure that it has probably already been pointed out in the debate on this rule that the FEA was originally created by the enactment of a bill that was reported out of the Committee on Government Operations to reorganize various functions in the executive branch. During the debate that took place on the bill, the Chairman, Mr. HOLIFIELD, stated that the Committee on Interstate and Foreign Commerce would have jurisdiction over certain substantive issues regarding the FEA, but the Committee on Government Operations retained jurisdiction over the Organic Act and would consider such issues as relocation of functions delegated to the FEA should the FEA determine it.

The only plea that I am making to the Members of the House this morning is this: There is a proper way under the established committee procedures of this House to go about the reorganization of the FEA. Let me point out that this authorization bill today calls for, I believe, a 3½-year extension of the FEA. If the Members think that is too long an extension under the open rule that the Committee on Rules has provided, they can offer an amendment striking that or providing for a shorter extension. They can extend it for only 1 year, if they would like to, and then put the Committee on Government Operations under the proper amount of pressure to conduct hearings promptly on the question of whether or not this organization should be either terminated or totally reorganized.

The gentleman from Indiana (Mr. FITHIAN) has objected to the provision of the committee amendment that would give some jurisdiction to the Federal Energy Administration over solar energy, and I think that is as a result of an amendment that was offered in committee by the gentleman from New York (Mr. OTTINGER).

If the Members do not like that, I think what they ought to do is to offer an amendment to strike that particular provision. In other words, the Members of this body deserve the right today under an open rule to debate this question, to offer amendments if they so desire, and then vote on the bill. If they are convinced, as apparently the gentleman from Idaho and others are, that the FEA should be abolished outright, they will have an opportunity in the vote on the legislation to cast their vote against the bill.

But I think we ought to at least have some regard for the committee system. We ought to let the Committee on Government Operations conduct proper hearings on this. I frankly told the gentleman from Indiana when he testified before the committee that I was very impressed with the work he had done along with the gentleman from Colorado (Mrs. SCHROEDER) on this whole question. But certainly I think they ought to take their proposition to the Committee on Government Operations

and get that committee to listen, as I am sure they will, to a measure that would properly reorganize this agency.

Mr. FITHIAN. Mr. Speaker, will the gentleman yield?

Mr. ANDERSON of Illinois. I yield to the gentleman from Indiana (Mr. FITHIAN).

Mr. FITHIAN. Mr. Speaker, I totally concur with the last statement made by the gentleman from Illinois, and the only way to get this to the Government Operations Committee is to vote down the rule so this Government Operations Committee can have 2 or 3 weeks to do that.

Mr. ANDERSON of Illinois. No, let me interrupt. I think we can vote down the bill and then the Committee on Government Operations would be under some considerable pressure to examine the proposal of the gentleman on his bill.

Mr. FITHIAN. Would the gentleman from Illinois, who is a real student of government, admit that to vote against the bill today is to sort of vote for chaos and there is no place for that function to be transferred at the present time?

But I would like to ask this question about the remarks made about the gentleman from California (Mr. HOLIFIELD).

The SPEAKER. The time of the gentleman from Illinois has expired.

Mr. QUILLLEN. I yield to the gentleman from Illinois for 1 additional minute.

Mr. TAYLOR of North Carolina. Mr. Speaker, will the gentleman yield?

Mr. ANDERSON of Illinois. I yield to the gentleman from North Carolina.

Mr. TAYLOR of North Carolina. Mr. Speaker, some speakers have intimated that the energy crisis is over. Considering that we are buying over 50 percent of our oil today from abroad and that the figure is increasing each month, and we are more vulnerable today than we were 2 or 3 years ago to an Arab oil embargo, does the gentleman agree that the energy crisis is over?

Mr. ANDERSON of Illinois. No, I certainly do not. The gentleman from North Carolina makes an excellent point. There are certain authorities exercised by the FEA that I think have to be continued because the energy crisis is not over.

Mr. FITHIAN. Mr. Speaker, will the gentleman yield?

Mr. ANDERSON of Illinois. I yield to the gentleman from Indiana.

Mr. FITHIAN. I thank the gentleman for yielding.

I was not a Member of this body when the gentleman from California (Mr. HOLIFIELD) conducted the bill through the Congress, but I would refresh the gentleman's memory on what Mr. HOLIFIELD said:

The new FEA will be a temporary organization largely concerned with the immediate and short-term aspects of the energy emergency situation we are facing, because of inadequate energy supplies.

Mr. Chairman, let me emphasize that this is a bill for a temporary agency. The bill provides that the act will terminate two years after the effective date. Six months before the act expires, the President is directed to transmit to the Congress a report with recommendations as to the disposition of the agency's functions.

Mr. SISK. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. McCORMACK).

Mr. McCORMACK. Mr. Speaker, I am going to oppose this rule. As far as I can recall, I have not opposed an open rule before. However, I have no choice, given the existing situation.

I do not completely agree with the statements of the gentleman from Colorado in her remarks of criticism against the Federal Energy Administration. I believe we should have an FEA and I believe the agency has work to do. However, I believe this bill is so bad that we cannot possibly consider it today as we should, and we should not try to rewrite it on the floor. We know we cannot get a point of order against some of the worst features of this bill, and we know there is no good way to defeat the previous question and write a new rule.

Therefore, I suggest we send this bill back to the committee by defeating the rule and tell the committee to work with the Government Operations Committee and try to write a responsible bill.

I would point out to the Members of this House that this bill authorizes \$50 million for energy conservation demonstration. Last week on this floor, we authorized \$202 million for conservation research, development, and demonstration within the Energy Research and Development Administration.

Knowing that, the members of the Commerce Committee included an authorization of \$49.9 in this bill before us for energy conservation. Furthermore, knowing that this House last week authorized \$229 million for solar energy research, development and demonstration, and then, here on the floor, added \$116.2 million more for solar energy.

In the fact of this action last week, this bill would set up a new, totally duplicative solar energy program in the FEA.

I want to point out to the Members of the House that Public Law 93-473, which we enacted overwhelmingly in this House in 1974, established a solar energy research, development, and demonstration program within the ERDA.

The SPEAKER pro tempore. The time of the gentleman from Washington has again expired.

Mr. SISK. Mr. Speaker, I yield the gentleman from Washington an additional one-half minute.

Mr. McCORMACK. Mr. Speaker, I point out that the Solar Energy Heating and Cooling Demonstration Act is a demonstration program under ERDA. These programs, every one, are totally within the Energy Research and Development Administration.

This bill before us really infringes on the jurisdiction of the Government Operations Committee.

It should be returned to committee, and replaced with a completely new bill.

Mr. SISK. Mr. Speaker, I yield 2 minutes to the gentleman from Connecticut (Mr. MOFFETT).

Mr. MOFFETT. Mr. Speaker, at the very least as we debate this rule, Members should be informed about what the committee did. I offered a series of amendments which cut over \$1 million

out of \$3 million for PR, public relations activities at the FEA.

Moreover, those who have been concerned about the nuclear orientation and nuclear advocacy of FEA, my amendment cut out the office entirely. This speaks to the point of the gentleman from Indiana (Mr. FITHIAN) who talked about duplication on these issues. And it means a cut of another half-million dollars.

Today I will offer an additional amendment to cut out another \$238,000 from FEA's PR budget. This is well justified. There are other amendments that are also well justified and bring this bill to a point deserving of approval.

The gentleman from Indiana said this bill means this agency will grow and grow. I do not know what the gentleman means by that, because we have cut the agency down to size. That is exactly what this bill will do.

The gentleman from California (Mr. Moss), the chairman of the other subcommittee which deals with FEA, has done a terrific job of oversight with respect to a number of matters.

We have also identified some of the things that FEA is doing right. I might refer to the utility demonstration project which is going on all over the country, in many of the districts that the Members represent here, which will lead us to fairer utility rate structures in a very constructive way. They have been doing a very good job in building efficiency and insulation and we should recognize this.

Finally, what is the FEA doing that is essential to those of us who voted for H.R. 7014? We realize they are doing some very important things in monitoring price control; not too perfectly, of course. There is no agency that ever will.

There has been tremendous oversight of the FEA on the part of the gentleman from California (Mr. Moss) and the gentleman from Michigan (Mr. DRUGGELL). In fact this agency has more aggressive oversight than any other agency in Government.

The SPEAKER pro tempore. The time of the gentleman from Connecticut has expired.

Mr. QUILLLEN. Mr. Speaker, I yield the gentleman 2 additional minutes.

Mr. MOFFETT. Mr. Speaker, the opponents have said they can switch these functions to other agencies. It was interesting to hear the gentleman from Colorado say that maybe we put it in the FPC, but she's not sure that is where it should go. If the FEA is under the stranglehold of the energy companies, then what agency is under less of a stranglehold than the FEA? If we are going to transfer it to an agency that is less under a stranglehold of the oil companies, let us be particular what that agency is and whether it is less infiltrated by ex-oil company executives.

Of course, it has been politicized; but if we look at those agencies in the past 8 years that have been politicized, we can make a case for every agency being eliminated. Of course the FEA and most other agencies have been captured by the interests they are supposed to control; but that does not make a case for eliminating

them totally. The problem is not the existence of the agency. The problem is that we need to recapture it from those industries which are supposed to be controlled, but which have captured and kidnapped this agency.

The gentleman from Idaho mentioned the campaign trail and how popular it would be to abolish this agency. Sure, it would be popular until we see price controls go down the drain and utility demonstration projects go down the drain.

Mr. HARKIN. Mr. Speaker, will the gentleman yield?

Mr. MOFFETT. I yield to the gentleman from Iowa.

Mr. HARKIN. Mr. Speaker, the gentleman talks about deregulation of controls and everything; but last fall the FEA was promoting price deregulation of natural gas.

That is very important to the Midwest. The gentleman is talking about keeping price regulations on.

Mr. MOFFETT. If I may have my time back, I respond to the gentleman, indeed they are proproduce and proderegulation, but that does not mean that if there is a new crew in there after November, that they will not be proconsumer. I urge approval of the rule and the bill.

Mr. QUILLLEN. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. KETCHUM).

Mr. KETCHUM. Mr. Speaker and Members, like the gentlewoman from Colorado, I seldom vote against an open rule, preferring instead for open debate so that we can discuss the issues. But, this is an issue that has been discussed up and down the Hill for the past 2 years. This is an opportunity to put an end to FEA, send it back for perusal by the Government Operations Committee.

When we established FEA some 2 years ago, we were in the midst of an energy crisis, and we presumed that the FEA was going to do something about establishing "Operation Independence." Have we? Instead, we find ourselves importing more foreign oil than at any previous time in our history. For days last month, over 50 percent of our energy needs came from abroad.

What the FEA really has done is to discourage production. They have discouraged exploration, because I would submit that most of the producers today are spending more time filling out forms than they are looking for oil. I urge the defeat of this rule.

Mr. SISK. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. MOSS).

Mr. MOSS. Mr. Speaker, I say to those of my colleagues who are naive enough to believe that a referral of this bill, through turning down the rule, to the Committee on Government Operations, and that something would happen in 3 weeks, I say they are living in a dream world. Look at the schedule of this body when it reconvenes following the Memorial Day break. We have 41 bills to pass by the 11th of June, and then we have to complete action on appropriations.

There will not be a half dozen commit-

tees that can muster a working quorum. The Government Operations Committee, with 43 members, is one of those that has a chronic problem of getting a working quorum. I happen to be ranking member on the Government Operations Committee, and I am the ranking member on the Committee on Interstate and Foreign Commerce, so I am not asserting a matter of jurisdictional pride.

But, I am pointing out the practicalities of legislative business in this House. I have been here for a quarter of a century, and while I like to hear some of my good friends who have just arrived instruct us on how to expedite the business of the House, I suggest that the Member who identified himself as a historian pay a little more attention to the working history of the House.

Let me talk about what we had before we got the Federal Energy Administration. I remember one day we had hearings in the Committee on Interstate and Foreign Commerce, and we had three spokesmen on energy policy. We had the Secretary of the Interior—this was a transitional period—Admiral Wright, and we had former Governor Love of Colorado. At least two of them had diametrically opposed policy positions to urge upon the committee to help meet a crisis. We do not need that kind of confusion. In addition to that, we had the Energy Office; we had the Federal Price Control people; the Cost of Living Council, and of course we have had representatives of the Federal Power Commission.

I am familiar with the Federal Power Commission because, in addition to exercising oversight over Federal Energy Administration, I also exercise it over the Federal Power Commission. I think at this moment we are getting better administration out of the Federal Energy Administration than we are out of the Federal Power Commission.

I think it is able to expedite the business much more efficiently than the Federal Power Commission.

I hope when the oversight hearings are concluded, and the recommendations to the committee are made, that we will be able to see an expediting of the business of all of the independent regulatory commissions that come within the jurisdiction of the Committee on Interstate and Foreign Commerce. But I sense really what underlies the opposition here is the jurisdictional issue.

I think the gentleman from Washington (Mr. McCORMACK) laid it out very clearly. It is jurisdiction. He is extremely supersensitive as to any threat to what he regards as his own exclusive domain. I can only say to him that we are not interfering with his domain. We are dealing with a piece of legislation that was properly referred to the Committee on Interstate and Foreign Commerce; and under the chairmanship of the distinguished gentleman from Michigan, Mr. DINGELL, the committee has done a very good job of authorizing funding for an additional fiscal year.

That is all we are talking about, the funding of an agency that has a legislative mandate to carry out a program of

price monitoring and of product allocation for the next year. This is not the place to rewrite any of the basic energy acts. It is not the place to resolve injured feelings over jurisdictional matters. The practical problem is to provide the authority for the Committee on Appropriations to fund the on-going activities which are essential.

I can spell out many, many areas of criticism of the Federal Energy Administration, and I could do so of any other agency of the Government. I might say that I could do that under the administration of either political party who controls the executive branch of Government. But let us not do that. Let us do the practical, realistic thing here today and adopt the authorizing legislation.

Mr. QUILLLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Speaker, those who feel that this vote has anything to do with dismantling or continuing an oil price control program are simply wrong. The only reason for passing this rule and for extending FEA is to create an orderly process by which already determined policy of this House will be carried out.

The law that controls the question of price of oil is the Energy Policy and Conservation Act. It keeps in effect a program which has to do with the control on the price of oil for about four more years. This agency came into being under the Federal Energy Act of 1974. Before the existence of this agency, the President carried out the mandates with respect to oil price control through what is called the Federal Energy Office. That was totally within the control of the President of the United States.

When FEA was created the President reassigned the responsibility to that agency.

If we should disestablish the agency or if we should defeat the rule and if the agency should go out of existence, the program would go on, but it would be administered in an agency totally within the President's control, without Congress having any part in determining the agency's shape.

If the Members want to change the FEA, they can extend the FEA's authorization here, as is sought to be done, and then follow the orderly process of simply passing a law through the Committee on Government Operations that could supersede what we do here.

Mr. QUILLLEN. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. GOLDWATER).

Mr. GOLDWATER. Mr. Speaker, the adoption of this rule would allow the Committee on Interstate and Foreign Commerce to bring up a bill which clearly invades the jurisdiction of the Committee on Science and Technology. In addition, if this rule is adopted, it would allow this Committee on Interstate and Foreign Commerce to bring up a bill which would greatly expand the scope and area of authority and jurisdiction of FEA and truly duplicate ongoing efforts now in process in ERDA.

For example, under this FEA bill it

moves FEA into an area called Solar Energy Government Building projects, which is clearly a program that is ongoing and that is being accelerated on a daily basis within ERDA now.

ERDA has cooperative efforts with all agencies of Government in developing techniques and procedures for assessing and implementing solar applications on Federal buildings.

Mr. Speaker, I urge defeat of this rule, if for no other reason, simply so we can send it back to committee, and have this area straightened out and get the jurisdictions straightened out between the responsibilities of these two committees.

Mr. OTTINGER. Mr. Speaker, will the gentleman yield?

Mr. GOLDWATER. I yield to the gentleman from New York.

Mr. OTTINGER. Mr. Speaker, this clearly is not duplicative of what ERDA is doing. ERDA is engaged in research and development and demonstrations and new technologies.

The purpose of this bill, as quite clearly stated in the report, is to get out the commercial application of existing technologies, and that is entirely in accordance with the agreement that was arrived at with FEA.

Mr. GOLDWATER. Of course, Mr. Speaker, the gentleman is absolutely wrong, and I know he serves on the committee. Application is part of ERDA's responsibility.

Mr. QUILLEN. Mr. Speaker, I yield 6 minutes to the gentleman from Ohio (Mr. BROWN).

Mr. BROWN of Ohio. Mr. Speaker, I do not ordinarily take the well in support of my good friends, the gentleman from Texas (Mr. ECKHARDT) and the gentleman from California (Mr. MOSS), on energy matters and in opposition to my good friends, the gentleman from California (Mr. GOLDWATER) and the gentleman from California (Mr. KETCHUM), on energy matters, but I find myself obliged to do so this morning in order to try to get some setting down of what this argument seems to be.

First, let us review a little history. The first Federal step in dealing with our energy problem was addressed when the President established his own energy adviser. That was before the Arab oil embargo. The Arab oil embargo came along in the fall of 1973—in October, to be precise—and shortly after that, by Executive order, the President established the Federal Energy Office.

Then the Congress acted to put into effect the Emergency Petroleum Allocation Act which was passed in the last few weeks of 1973.

In the next year, in 1974, the Federal Energy Office was translated by legislation that originated in the Committee on Government Operations into the Federal Energy Administration. Then we passed the Energy Policy and Conservation Act in late 1975, and that act modified the original authorities of the Emergency Petroleum Allocation Act.

Now, I lacked enthusiasm for some of the authorities to regulate the energy industry that were enacted in a couple of those pieces of legislation, but the authorities were given by the Congress

and they become the law of the land. Whether we are for or against what the FEA has the authority to do by congressional action and whether or not we feel it does that job properly, it will continue to exercise that role under the legal authority which Congress has given it, and the fact of the matter is that it is well organized in an administrative sense.

This authority to regulate is encapsulated in the Federal Energy Administration, and it ought to be kept there from the standpoint of efficient Government organization. It sought not to be scattered through all kinds of other Government agencies.

Whether we want that function performed or whether we do not want that function performed, as my friend, the gentleman from Texas (Mr. ECKHARDT), pointed out, is not the issue. It is going to be performed because the law giving the authority for the performance of those functions exists elsewhere. Therefore, the question is, Should it be centered in FEA, where it would be logically operated, or should it be scattered to other agencies?

My feeling is that FEA has been a cancer on our economy in the energy field to some extent. I do not want to metastasize that cancer, however, and scatter it through other agencies. Therefore, I support the rule to continue this legislative creation of the Committee on Government Operations, FEA, and to keep it under the authority of the Committee on Interstate and Foreign Commerce, where we deal with the other legislation that gives it its authority to function.

Mr. Speaker, my friend, the gentleman from California (Mr. KETCHUM), says that the FEA administration of the law has not been all that good and that it has been harmful to the energy industry. Unfortunately, I think it is not because it has been badly administered, but because some of those laws are bad; and I think he would concur with me.

Therefore, Mr. Speaker, once again we have given the control of pricing, the allocation of product, the entitlement system, and so forth to FEA; and it ought to be kept in FEA.

If we want to end FEA, however, we do not beat the rule. We vote down the authorization, and then we do not have FEA in existence; but that, in effect, scatters those authorities throughout other Government agencies. I am not sure we want to do that from an administrative standpoint. The better way would be to vote to terminate price allocation and the other authorities that it has been given.

Mr. Speaker, my colleagues, the gentleman from Colorado (Mrs. SCHROEDER) and the gentleman from Indiana (Mr. FITHIAN) do not serve on either the Committee on Government Operations or the Committee on Interstate and Foreign Commerce as my friend, the gentleman from California (Mr. MOSS), and I do. I sit on the Subcommittee on Energy and Power of the Committee on Interstate and Foreign Commerce where we have given those authorities, and I did participate in the work of the Committee on Government Operations during the establishment of FEA.

I simply think that the Committee on

Interstate and Foreign Commerce is the committee which should have the authority over the continuation of FEA because we have the authority over the function and the performance of FEA.

Mr. Speaker, FEA has regulatory functions. It does not, as the gentleman from Washington (Mr. McCORMACK) points out, or should not have functions in the solar energy field. That is a redundancy. The function is already there in ERDA, and I am going to propose an amendment to keep it in ERDA by taking that part of the authorization out of the bill. Yet, once again, I do not think that my friend, the gentleman from Washington (Mr. McCORMACK), ought to oppose this rule because what we ought to do is strike the funds out of FEA that were put in by committee, not by the subcommittee.

Mr. Speaker, I will offer that amendment.

Mr. SISK. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. DINGELL).

Mr. DINGELL. Mr. Speaker, the opponents of the rule seem to forget that we are in the midst of an energy crisis. For the first time in history, we have recently found ourselves importing better than 50 percent of our oil.

Some of my colleagues, for example, the gentlewoman from Colorado (Mrs. SCHROEDER), have forgotten that in July and August of 1973 there were gas lines in Denver—before FEA was constituted. One of the reasons was that there were four agencies handling energy problems at that time: the Federal Energy Office, the Cost of Living Council, the Interior Department, and the Federal Power Commission.

Certain energy functions of those agencies have been brought together into one agency because Members of Congress, concerned citizens, industry, and citizens groups needed one place to go to.

Mr. Speaker, the consequence of rejecting the rule would be to put us right back where we were before. It would disorganize and scatter the functions presently vested in the FEA.

What are some of those functions? Price controls, allocation and entitlement, emergency planning, strategic reserve, contingency planning, industry energy conservation, State energy conservation programs and coal conservation programs.

Where will a Member of the Congress look for action if his constituents are affected by our action? What we would assure by rejecting this rule is that rather than having some rule and order there will be chaos.

The bill before us today was introduced in February. The Committee on Government Operations and the other committees have had at least as long as that to comment on the contents of the bill or to seek some kind of referral of the legislation to them for consideration. I am aware of no attempt by the chairmen of the respective committees to have these matters referred to them for consideration. I would say that we should consider the bill here, mark it up and then vote on it.

The SPEAKER pro tempore. The Chair will state that the gentleman from Ten-

nessee (Mr. QUILLLEN) has 3 minutes remaining and the gentleman from California (Mr. SISK) has 1½ minutes remaining.

Mr. QUILLLEN. Mr. Speaker, I yield myself the remaining time.

Mr. Speaker, I again urge my colleagues to vote "yes" on the rule because at this time the energy crisis is still real. I am receiving communications that gasoline distributors are now out of fuel for the Memorial Day weekend. Already some of the Arab nations have said that they are going to raise the price of oil.

I repeat to the Members of this House that the crisis is real. FEA needs to be extended, but let the merits of that be debated on the measure itself after we adopt the rule. I know today that a lot of the Members want to go home, but that is no reason for a "no" vote on the rule when the future driving habits of the American people are at stake. This rule, which makes in order a bill to deal with the problem of energy self-sufficiency that is so much on our minds, must not be defeated today.

So I again urge an affirmative vote on the rule.

Mr. Speaker, I reserve the balance of my time.

Mr. DRINAN. Mr. Speaker, I am opposed to the adoption of this rule, H.R. 1220, in its present form. The resolution provides for the consideration of the Federal Energy Administration authorization, H.R. 12169, but in its present form the rule is unfair.

Under the provisions of H.R. 1220, a major amendment which should be considered by this House is ruled nongermane. That amendment, offered by Congressman FITHIAN and Congresswoman SCHROEDER, would transfer the functions of the Federal Energy Administration to other agencies. However, the Rules Committee refused to provide for the consideration of this important amendment, and as a result, the House is being prevented from working its will on this legislative provision.

The Schroeder-Fithian substitute has been ruled nongermane in view of the argument that other legislative committees ought to be involved in legislation which would provide for a major governmental organization. It was felt that the Government Operations Committee should have been involved in the consideration of the substitute. I do not dispute this. As a member of the Government Operations Committee, I agree that my committee ought to consider the full ramifications of a major governmental reorganization. Yet by our actions today, we are denying a forum for the Schroeder-Fithian amendment and preventing the Government Operations Committee from involving itself in this matter at the same time. I, therefore, feel that this procedure is unwarranted.

I do believe that the House ought to be given a chance to work its will on the FEA authorization. My vote against this rule does not oppose this consideration. But I do oppose the pending rule as unfairly ruling out-of-order a major amendment which should be voted on by the membership of the House today.

GENERAL LEAVE

Mr. SISK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Resolution 1220.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. SISK. Mr. Speaker, I yield to myself the balance of my time.

Mr. Speaker, I join my colleague, the gentleman from Tennessee (Mr. QUILLLEN) in urging an aye vote on this rule. We have heard a great deal of discussion here but I think it is evident that the Committee on Interstate and Foreign Commerce should be given an opportunity to take the floor and to discuss the merits and demerits of their proposal and then the House, of course, will be given an opportunity to work its will on the legislation.

So, Mr. Speaker, I urge an aye vote.

Mr. Speaker, I move the previous question on the resolution.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the resolution.

There was no objection.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appear to have it.

Mr. SYMMS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 238, nays 116, not voting 77, as follows:

[Roll No. 313]

YEAS—238

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| Abdnor | Conable | Hagedorn |
| Adams | Conte | Haley |
| Addabbo | Corman | Hall |
| Allen | Cornell | Hamilton |
| Anderson, Ill. | Cotter | Harris |
| AuCoin | Coughlin | Farsha |
| Badillo | Daniel, Dan | Hechler, W. Va. |
| Bafalis | Daniels, N.J. | Heckler, Mass. |
| Baldus | Davis | Hefner |
| Beard, Tenn. | Derwinski | Heinz |
| Bennett | Devine | Helstoski |
| Bevill | Dingell | Henderson |
| Biaggi | Dodd | Hightower |
| Blester | Duncan, Tenn. | Hillis |
| Boland | du Pont | Holtzman |
| Bolling | Early | Horton |
| Bonker | Eckhardt | Hughes |
| Brademas | Edgar | Hungate |
| Breckinridge | Edwards, Calif. | Hyde |
| Brown, Calif. | Ellberg | Ichord |
| Brown, Mich. | Emery | Jarman |
| Brown, Ohio | Evans, Colo. | Jeffords |
| Broyhill | Evins, Tenn. | Johnson, Pa. |
| Burgener | Findley | Jones, N.C. |
| Burke, Calif. | Fish | Jordan |
| Burke, Fla. | Flood | Kasten |
| Burke, Mass. | Florio | Kelly |
| Burleson, Tex. | Ford, Tenn. | Koch |
| Burlison, Mo. | Forsythe | LaFalce |
| Butler | Fountain | Lagomarsino |
| Carney | Fraser | Leggett |
| Carr | Frenzel | Lehman |
| Cederberg | Frey | Lent |
| Clancy | Gilman | Litton |
| Clay | Goodling | Long, La. |
| Cochran | Gradison | Long, Md. |
| Cohen | Green | Lott |
| Collins, Ill. | Gude | Lundine |
| Collins, Tex. | Guyer | McClory |

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| McCloskey | Pike | Stanton, |
| McDade | Poage | J. William |
| McEwen | Preyer | Stark |
| McFall | Price | Steiger, Wis. |
| McHugh | Quie | Stephens |
| McKay | Quillen | Stokes |
| McKinney | Rallsback | Stratton |
| Madden | Randall | Studds |
| Madigan | Rangel | Sullivan |
| Maguire | Regula | Symington |
| Martin | Richmond | Talcott |
| Mazzoli | Roberts | Taylor, N.C. |
| Melcher | Rodino | Teague |
| Metcalfe | Roe | Thone |
| Meyner | Rogers | Treen |
| Michel | Roncallo | Tsongas |
| Milford | Rooney | Ullman |
| Miller, Ohio | Rosenthal | Van Deerlin |
| Mineta | Roush | Vander Jagt |
| Minish | Roybal | Vander Veen |
| Mitchell, N.Y. | Russo | Vigorito |
| Moakley | Santini | Waggonner |
| Moffett | Sarasin | Walsh |
| Moorhead, Pa. | Satterfield | Wampler |
| Morgan | Scheuer | Whalen |
| Moss | Schulze | Whitten |
| Murphy, N.Y. | Sebelius | Wiggins |
| Myers, Ind. | Seiberling | Wilson, Bob |
| Natcher | Sharp | Wilson, Tex. |
| Neal | Shriver | Winn |
| Nedzi | Shuster | Wirth |
| Nolan | Sikes | Wolff |
| Nowak | Sisk | Wright |
| Oberstar | Skubitz | Wyder |
| O'Brien | Smith, Iowa | Wylie |
| O'Hara | Smith, Nebr. | Yates |
| O'Neill | Snyder | Yatron |
| Ottinger | Solarz | Young, Fla. |
| Patten, N.J. | Spellman | Young, Tex. |
| Pepper | Spence | Zablocki |
| Perkins | Staggers | |

NAYS—116

| | | |
|---------------|---------------|-----------------|
| Alexander | Fithian | Mezviskey |
| Ambro | Flowers | Mikva |
| Anderson, | Flynt | Mink |
| Calif. | Fuqua | Mitchell, Md. |
| Andrews, N.C. | Ginn | Mollohan |
| Archer | Goldwater | Moore |
| Armstrong | Gonzalez | Moorhead, |
| Aspin | Grassley | Calif. |
| Baucus | Hammer- | Mottl |
| Bauman | schmidt | Murphy, Ill. |
| Beard, R.I. | Hanley | Murtha |
| Bedell | Hannaford | Myers, Pa. |
| Blanchard | Hansen | Obey |
| Blount | Harkin | Rassman |
| Bowen | Hawkins | Fatterson, |
| Brinkley | Hayes, Ind. | Calif. |
| Broomfield | Holland | Fa. tison, N.Y. |
| Buchanan | Holt | Faul |
| Burton, John | Howard | Pettis |
| Byron | Howe | Pickie |
| Chappell | Hubbard | Pritchard |
| Chisholm | Jacobs | Reuss |
| Clausen, | Jenrette | Robinson |
| Don H. | Jones, Okla. | Rousselot |
| Cleveland | Jones, Tenn. | Runnels |
| Conyers | Kastenmeier | Ruppe |
| Crane | Kazen | Ryan |
| D'Amours | Kemp | St Germain |
| Daniel, R. W. | Ketchum | Schroeder |
| Delaney | Keys | Shipley |
| Dent | Kindness | Simon |
| Derrick | Krebs | Slack |
| Dickinson | Levitas | Symms |
| Downey, N.Y. | Lloyd, Calif. | Taylor, Mo. |
| Downing, Va. | Lloyd, Tenn. | Thornton |
| Drinan | Lujan | White |
| Duncan, Ore. | McCormack | Whitehurst |
| English | Mahon | Young, Ga. |
| Evans, Ind. | Mann | Zeferetti |
| Fary | Mathis | |
| Fascel | Meeds | |

NOT VOTING—77

| | | |
|-----------------|---------------|-----------------|
| Abzug | de la Garza | Hinshaw |
| Andrews, | Dellums | Hutchinson |
| N. Dak. | Diggs | Johnson, Calif. |
| Annunzio | Edwards, Ala. | Johnson, Colo. |
| Ashbrook | Erlenborn | Jones, Ala. |
| Ashley | Esch | Karsh |
| Bell | Eshleman | Krueger |
| Bergland | Fenwick | Landrum |
| Bingham | Fisher | Latta |
| Boggs | Foley | McCollister |
| Breaux | Ford, Mich. | McDonald |
| Brodhead | Gaydos | Matsunaga |
| Brooks | Gialmo | Miller, Calif. |
| Burton, Phillip | Gibbons | Mills |
| Carter | Harrington | Montgomery |
| Clawson, Del | Hays, Ohio | Mosher |
| Conlan | Hébert | Nichols |
| Danielson | Hicks | Nix |

| | | |
|--------------|----------------|---------------|
| Peyser | Sarbanes | Traxler |
| Pressler | Schneebeli | Udall |
| Rees | Stanton, | Vanik |
| Rhodes | James V. | Waxman |
| Riegle | Steed | Weaver |
| Rinaldo | Steelman | Wilson, C. H. |
| Risenhoover | Steiger, Ariz. | Young, Alaska |
| Rose | Stuckey | |
| Rostenkowski | Thompson | |

The Clerk announced the following pairs:

On this vote:

Mr. Annunzio for, with Mr. Harrington against.

Ms. Abzug for, with Mr. Riegle against.

Mrs. Boggs for, with Mr. Phillip Burton against.

Mr. Thompson for, with Mr. de la Garza against.

Mrs. Fenwick for, with Mr. Dellums against.

Mr. Johnson of California for, with Mr. Steelman against.

Until further notice:

Mr. Nichols with Mr. Gibbons.
Mr. Breaux with Mr. James V. Stanton.
Mr. Bingham with Mr. Miller of California.
Mr. Glaimo with Mr. Peyser.
Mr. Rostenkowski with Mr. Bell.
Mr. Udall with Mr. Rose.
Mr. Brooks with Mr. Stuckey.
Mr. Gaydos with Mr. Charles H. Wilson of California.

Mr. Hébert with Mr. Fisher.
Mr. Hays of Ohio with Mr. Conlan.
Mr. Nix with Mr. Matsunaga.
Mr. Risenhoover with Mr. Andrews of North Dakota.

Mr. Krueger with Mr. Diggs.
Mr. Montgomery with Mr. Del Clawson.
Mr. Waxman with Mr. Ashbrook.
Mr. Ashley with Mr. Rees.
Mr. Bergland with Mr. McDonald.
Mr. Brodhead with Mr. Edwards of Alabama.

Mr. Carter with Mr. Landrum.
Mr. Erlenborn with Mr. Danielson.
Mr. Weaver with Mr. Esch.
Mr. Ford of Michigan with Mr. Sarbanes.
Mr. Hicks with Mr. Traxler.
Mr. Latta with Mr. Eshleman.
Mr. Pressler with Mr. Hutchinson.
Mr. Rinaldo with Mr. Karth.
Mr. Steed with Mr. McCollister.
Mr. Young of Alaska with Mr. Mills.
Mr. Steiger of Arizona with Mr. Mosher.

Mr. BLANCHARD changed his vote from "yea" to "nay."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Roddy, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills of the House of the following titles:

On May 21, 1976:

H.R. 12018. An act to amend the Rehabilitation Act of 1973 to provide that the center for deaf-blind youths and adults established by such Act shall be known as the Helen Keller National Center for Deaf-Blind Youths and Adults.

On May 22, 1976:

H.R. 2776. An act for the relief of Candido Badua;

H.R. 4038. An act for the relief of Jennifer Anne Blum;

H.R. 5227. An act for the relief of Frank M. Russell; and

H.R. 8863. An act for the relief of Randy E. Crismundo.

APPOINTMENT OF CONFEREES ON H.R. 12438, MILITARY PROCUREMENT

Mr. PRICE. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 12438) to authorize appropriations during the fiscal year 1977 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve of each Reserve component of the Armed Forces and of civilian personnel of the Department of Defense, and to authorize the military training student loads, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to a conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Illinois? The Chair hears none, and appoints the following conferees: Messrs. PRICE, HÉBERT, BENNETT, STRATTON, ICHORD, NEDZI, RANDALL, CHARLES H. WILSON of California, LEGGETT, BOB WILSON, DICKINSON, WHITEHURST, and SPENCE.

ANNUAL REPORT OF THE RAILROAD RETIREMENT BOARD FOR FISCAL YEAR 1975—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Interstate and Foreign Commerce:

To the Congress of the United States:

I hereby transmit to you the Annual Report of the Railroad Retirement Board for fiscal year 1975.

The Report indicates that the Board paid retirement and survivor payments in excess of \$3 billion to almost one million one hundred thousand individuals during the fiscal year, and that it made unemployment and sickness benefit payments totaling \$67 million to over 137,000 claimants.

This Report also includes a summary of legislation enacted in 1974, which restructured the retirement and survivor program and substantially improved the financing of the railroad retirement system. In addition, it includes a description of the 1975 amendments to the Railroad Unemployment Insurance Act, which increased the daily rate of unemployment and sickness benefits payable to railroad workers and made other improvements in that program.

GERALD R. FORD.

THE WHITE HOUSE, May 27, 1976.

THIRD ANNUAL REPORT ON COASTAL ZONE MANAGEMENT ACT OF 1972—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Merchant Marine and Fisheries:

To the Congress of the United States:

I am transmitting herewith the third annual report from the Secretary of Commerce covering the significant developments that took place during the second full year of implementation of the Coastal Zone Management Act of 1972. The period covered is Fiscal Year 1975, when the states began full development of their coastal programs.

The country's urgent need for new domestic sources of energy and our concern for minimizing environmental damage and community disruption have combined to underscore the importance of the effort put forth in the coastal zone program. The program points out the importance of cooperation at the state and federal level in order to provide appropriate and timely solutions to these important problems.

GERALD R. FORD.

THE WHITE HOUSE, May 27, 1976.

FEDERAL ENERGY ADMINISTRATION AUTHORIZATION AND EXTENSION

Mr. DINGELL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12169) to amend the Energy Policy and Conservation Act to authorize appropriations for fiscal year 1977 to carry out the functions of the Federal Energy Administration, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Michigan (Mr. DINGELL).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 12169, with Mr. NATCHER in the chair.

The Clerk read the title of the bill. By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Michigan (Mr. DINGELL) will be recognized for 30 minutes, and the gentleman from Ohio (Mr. BROWN) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Michigan (Mr. DINGELL).

Mr. DINGELL. Mr. Chairman, I yield myself 3 minutes.

Mr. BAUMAN. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield briefly to my good friend, the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I wonder if the gentle-

man could enlighten the Committee on exactly what procedure we will be following in handling this bill this afternoon. The word has gone around that we will not finish consideration of the bill and we might go on to other matters.

Mr. DINGELL. Mr. Speaker, in response to the question of the gentleman from Maryland, I suspect—and I am not ready to respond to the inquiry fully, because the matter is now being cleared with the leadership—what will transpire is that we will conclude general debate, we will rise, and the gentleman from Texas (Mr. ECKHARDT) will raise a question of energy action No. 2 by FEA, relating to small refineries, for disapproval or approval under the provisions of EPCA. I would suspect by that time it would be too late for the House to conduct business. We will probably not return to this legislation until some subsequent time.

Mr. BROWN of Ohio. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Ohio (Mr. Brown).

Mr. BROWN of Ohio. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I think it ought to be made clear by the gentleman in the well in this colloquy, however, that if the gentleman from Texas (Mr. ECKHARDT) makes his disapproval motion, there is quite likely to be a vote on that motion, on that disapproval motion, this afternoon. Technically, the gentleman from Texas would have 10 hours of debate on that issue. I would assume, prayerfully, that the 10 hours would not be exhausted in the consideration of the matter because, while it is a complex matter, it would not seem to merit the attention of this body for 10 hours on the day before the holiday recess.

Mr. DINGELL. Mr. Chairman, I would agree thoroughly with my colleague, the gentleman from Ohio (Mr. Brown). I would agree thoroughly with him that the House should be on notice that there will probably be a vote on disapproval of energy action No. 2 by FEA.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield first to my good friend, the gentleman from Texas (Mr. ECKHARDT), and then if he desires, I will yield to my good friend, the gentleman from Texas (Mr. PICKLE).

Mr. ECKHARDT. Mr. Chairman, I thank the gentleman for yielding.

I can assure the gentleman from Ohio (Mr. Brown) that the matter would be expedited no matter how the motion goes.

I may say to the gentleman from Ohio (Mr. Brown) that the same matter is either presently before the Senate or will be in 10 minutes, and, of course, this being a matter requiring only one body's disapproval, we do not know whether this will be a moot question at that time or not.

Mr. BROWN of Ohio. Mr. Chairman, if the gentleman will yield, if the Senate votes it down, then it would not come up before this body. On the other hand, if the Senate does not vote down the proposal of FEA, then the proposal of the

gentleman from Texas (Mr. ECKHARDT) to disapprove would be disposed of within an hour if we fail to support the gentleman from Texas, which I prayerfully hope would not happen because the gentleman from Texas (Mr. ECKHARDT) and I have a similar view on this subject.

Mr. PICKLE. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I can only yield briefly to my friend, the gentleman from Texas, because I have already used nearly 3 minutes.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. DINGELL) has expired.

Mr. DINGELL. Mr. Chairman, I yield myself 1 additional minute, and I yield briefly to my friend, the gentleman from Texas (Mr. PICKLE) for a question.

Mr. PICKLE. Mr. Chairman, I must say to the gentleman from Texas (Mr. DINGELL) that it is not so much a question but a comment that I would like to make briefly, and that is this: that I very much oppose the motion to disapprove.

We have had proof that there has been a great inequity from this special rule No. 6, and as one who originally supported it, along with the gentleman from Texas (Mr. ECKHARDT), I think it would work a great disadvantage to small service stations. Therefore, I would insist on a vote.

I think we ought to have ample time to debate the subject. The gentleman said that it would be expedited, but under the rule it still might take 10 hours. I would hope that I can be here to engage in a full discussion on this subject.

Mr. DINGELL. Mr. Chairman, I am in accord with what my friend, the gentleman from Texas (Mr. PICKLE), has said.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. DINGELL) has again expired.

Mr. DINGELL. Mr. Chairman, I yield myself 4 additional minutes.

Mr. Chairman, I urge approval of H.R. 12169, as amended.

H.R. 12169 is a relatively simple and uncomplicated bill which authorizes funds for the Federal Energy Administration for the coming fiscal year and for the budget transition quarter which immediately precedes it. H.R. 12169 extends the term of the Federal Energy Administration Act to September 30, 1979.

Within the Committee on Interstate and Foreign Commerce, there was very little doubt expressed as to the desirability of extending this legislation for an additional period of time or as to the amounts which we authorized. The full committee did authorize \$38 million for energy conservation programs and almost \$3 million for a solar energy implementation program, both of which are beyond those amounts authorized by the Subcommittee on Energy and Power in its initial consideration of this legislation. The only element of this legislation which might be termed substantive, is a requirement that the project independence evaluation system computer model be fully opened up for public re-

view and inspection and I am pleased to say that this aspect of the legislation has received bipartisan approval.

Certain Members have indicated opposition to extension of the Federal Energy Administration. One of these did, in fact, appear before the subcommittee and testified on this subject. He and others have expressed a concern that the Federal Energy Administration ought to be terminated forthwith. One or more amendments may be offered on this subject. I would like to state for the record, very clearly that I believe the public interest would not be served by terminating the existence of the Federal Energy Administration at this time. That agency has been assigned important functions with respect to regulation of the price and supply of energy, establishment of procedures for emergency standby authorities, and many other responsibilities.

I do not feel that we are going to solve the energy crisis by dismantling the agencies which the Congress has, after extensive debate, created, and empowered to deal with that energy crisis. Newspaper reports indicate, and I have no reason to doubt their accuracy, that the public's reaction to the energy crisis of a few years ago has now virtually disappeared and that conservation of energy is no longer a matter of concern. I am here to tell you, however, that the energy crisis is very much with us and that the problems which exist are more urgent today than they were last year or the year before and that they will not, in fact, go away. I do not feel that it would be a responsible action for the Congress to take the step of disbanding this agency at this time.

I am aware that the Federal Energy Administration has been criticized in the past and that the basis for some of these criticisms may, in fact, have been well-founded. It is for this reason that the subcommittee decided to take the step of authorizing funds for this agency for 1 year only—in order to provide us with an opportunity to come back again after intensive review of the action of the FEA during the next year and to take whatever steps we must to cure the problems which we discover. I would submit that this is a far more responsible way of achieving the results that we all agree are desirable: An effective, functioning Federal Energy Administration.

Mr. BROWN of Ohio. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the Federal Energy Administration authorization bill, as reported out of the Subcommittee on Energy and Power of the Committee on Interstate and Foreign Commerce, was a rarity among energy bills in that it received bipartisan support in that subcommittee. The bill balanced the budgetary needs of FEA and its expanded programs established under the Energy Policy and Conservation Act, EPCA, with the need to keep Federal spending at a minimum to avoid inflationary impact and further deficit spending. However, two amendments passed by the full committee have added a total of \$40 million to the fiscal year

1977 budget and force me to oppose this legislation as it now stands.

The first amendment added by the committee authorizes \$2.9 million to be used to encourage the use of solar energy in commercial and other applications. This would require the establishment of an entire new program authority for such purposes in FEA. Such program authority already exists in the Energy Research and Development Administration.

There was no testimony during the hearings on this legislation that demonstrated the need for or cost justification of such an additional program in FEA. In fact, this money would mean unnecessary duplication of funds already being spent by ERDA in its solar energy program. Section 8 of the Solar Energy Research, Development and Demonstration Act of 1974 (Public Law 93-473) specifically requires the ERDA Administrator to set up a solar energy information data bank to provide for the processing and dissemination of solar energy technology information to the public.

Further, this amendment is an intrusion on the jurisdiction of the Committee on Science and Technology, to which the rules of the House grant jurisdiction over all energy research and development except nuclear research and development.

In H.R. 13350, the ERDA authorization bill that just passed the House last week, the House has approved \$345 million for fiscal year 1977 for the solar energy program, with \$116 million of that added in a floor amendment.

The sum of \$80.6 million of the total amount is earmarked for solar heating and cooling demonstration projects which are the most developed of the solar technologies and the closest to commercial application.

Mr. McCORMACK. Mr. Chairman, will the gentleman yield?

Mr. BROWN of Ohio. I would be glad to yield to the gentleman from Washington.

Mr. McCORMACK. Mr. Chairman, I want to first thank the gentleman from Ohio for his comments and to say that I am categorically in agreement in everything the gentleman has said concerning this attempt to establish a new solar energy program within the Federal Energy Administration under this bill.

I have reviewed the material in the bill and I have reviewed the material in the report, and I endorse it, and I will have this documented by the Energy Research and Development Administration, that there is not a single project listed in this entire report that is not already being conducted by the Energy Research and Development Administration under existing law, either in the Research and Development and Solar Research Demonstration Act of 1974 or the Solar Energy Heating and Cooling Demonstration Act of 1974, there is not a single concept in the project, included in this bill before us that is not already being carried out and under way by the Energy Research and Development Administration and under its authorization and under the authorization provided

in the House, as the gentleman from Ohio has pointed out, of \$300 million for us last week.

Mr. BROWN of Ohio. Mr. Chairman, I thank the gentleman from Washington for his comments.

The fact of the matter is that the Committee on Interstate and Foreign Commerce does not have jurisdiction over the energy program functions of the Energy Research and Development Administration, which was created by the Committee on Government Operations, on which I serve. ERDA is for, as the name implies, energy and research development and of course development would include the heating and cooling demonstrations, and that is specifically covered in the ERDA legislation.

And so the gentleman from Washington and I are as one on the answer to the question. It is not because I love the Committee on Science and Technology any more and the Committee on Interstate and Foreign Commerce any less, but because I think it makes good rational sense from the standpoint of the organization of the committee structure in the U.S. Congress and from the standpoint of the administration of various energy programs that solar energy remain with ERDA. And so we agree, and I think for the same reason.

Mr. McCORMACK. Mr. Chairman, will the gentleman yield further for one more comment?

Mr. BROWN of Ohio. I would be happy to do so.

Mr. McCORMACK. Mr. Chairman, I want to say that the Federal Government, both the administration and the Congress, have really failed pretty miserably in the last 2½ years insofar as the energy crisis is concerned. Certainly there has been valiant attempts by certain individual committees to try to cover certain areas of responsibility, but one of the real reasons that the Federal Government has failed, one of the reasons America does not have an energy policy or an energy program to implement that policy today, is because of the splintering of responsibilities for energy not only in the administration but also in the Congress.

I think it is tragic that we cannot organize in such a way that we can handle these matters more efficiently, but this legislation before us today is seriously exacerbating the situation, not only in the administration but in the Congress. For that reason, therefore, I will support the gentleman's amendment to trim these sections from the bill.

Mr. BROWN of Ohio. Mr. Chairman, I might say to the gentleman from Washington that it is not merely a matter of an organizational problem but a matter of decisionmaking by the Congress.

In my opinion, the research and development activities that have been authorized by the Congress have made a great deal more sense than some of the regulatory steps that we have taken.

Mr. McCORMACK. I thank the gentleman for that comment.

Mr. BROWN of Ohio. It is not meant as a personal compliment, although it could be viewed, perhaps, from the gen-

tleman's efforts, because I respect the knowledge and the efforts of the gentleman from Washington in the area of research and development. He has been a leader in this field. As the gentleman from Washington knows, I have not been enthusiastic about some of the regulatory steps we have taken.

The second amendment which was added by the full committee provides an additional \$37.4 million for the Office of Conservation and Environment. This represents a \$37.4 million increase above the Presidential budget request and will give that office a funding level of more than twice that it enjoyed in fiscal year 1976. No programmatic justification for such an increase was provided by the amendment's author when the matter was under consideration by the full committee.

As I noted, the subcommittee did not take that step. While conservation is an important aspect in our Nation's efforts to achieve energy independence, blanket authorizations not tied to specific programs provide room for misallocation and inefficient use of funds even in the most efficiently administered of agencies. Such a free rein in funding is not a good way for this Congress to legislate.

The need for these additional authorizations has not been demonstrated. The Federal Energy Administration did not speak to this subject when it testified before our committee with reference to the authorization, and I intend to offer amendments to delete them from the bill at the appropriate time and would ask the support of my colleagues in that regard.

I might ask, Mr. Chairman, to proceed further to explain just what the authorization levels are in this piece of legislation. Executive Direction and Administration would be provided with \$8,655,000 in the transition quarter and \$33,324,000 in the fiscal year 1977; the Office of Energy Policy and Analysis, \$8,137,000 in the transition quarter, \$34,971,000 in fiscal year 1977; the Office of Regulatory Programs, \$13,238,000 in the transition quarter, \$62,459,000 for fiscal year 1977; the Office of Energy Conservation and Environment, \$7,386,000 in the transition quarter, \$49,961,000 in fiscal year 1977 under the full committee proposal and an additional sum for electric utility demonstrations—\$2,611,000 in the transition quarter, \$10,445,000 in the fiscal year 1977 period; the Office of Energy Resource Development, \$3,052,000 in the transition quarter, \$16,934,000 in the fiscal year 1977 period; the Office of International Energy Affairs, \$300,000 in the transition quarter, \$1,921,000 for fiscal year 1977; and for a new program authority of solar energy, the program that I hope to eliminate in my amendment, \$589,000 in the transition quarter and \$2,356,000 in fiscal year 1977. This is a grand total of \$43,968,000 in the transition quarter and \$212,371,000 in fiscal year 1977.

Mr. Chairman, I do think that the Federal Energy Administration is well on its way to being the new Department of Agriculture of the U.S. Government, in other words, one which may have ultimately more people involved in regulation than

there are people in the industry they are trying to regulate. I, for one, do not think that is wholesome.

However, the reason for that is because the Congress has given this authority to the Federal Energy Administration. I do not think that the authorities are desirable and think that we should address ourselves to the elimination of that control as soon as possible. However, while it exists, I think it is desirable that the controls continue to be exercised in a centralized agency so that when the authorities are slowed down or terminated, we can also slow down and terminate a single agency rather than have to root around through government and find all of those folks who are doing the job that we have given them the authority to do.

Mr. Chairman, I reserve the balance of my time.

Mr. ECKHARDT. Mr. Chairman, I yield 2 minutes to the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Chairman, I urge approval of the legislation now before the House: H.R. 12169, as amended. I believe that it is important that this body take the positive step of retaining an agency whose principal focus is to address today's and tomorrow's energy questions.

There are certain actions which the Federal Energy Administration has taken with which I disagree. As a matter of fact, I could say the same of most agencies of Government. But, simply because this agency has been placed in the role of a policeman is no reason to take away its authority. Now more than ever it is necessary that we retain a strong central direction to address the energy issues which confront this country.

We are told by experts that our energy problems are becoming more acute—that our dependence upon energy sources from foreign countries is greater now than it has ever been. This is no time to dismantle the agency established to deal with this problem and to scatter those responsibilities among a group of ill-coordinated, disorganized agencies elsewhere in the Federal Government.

It may be desirable to reorganize the Federal energy structure, but none of the proposals under serious consideration in either body of the Congress at this time accomplish such a reorganization. When that time comes and legislation has been carefully drafted to meet the situation, then, I believe, we will have responsibility to deal with that problem in proper order.

Mr. BROWN of Ohio. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. KETCHUM).

Mr. KETCHUM. Mr. Chairman, I rise in complete opposition to this legislation. I hope that my colleagues would heed the obvious will of the people and begin to dismantle the unresponsive and expensive Federal bureaucracy. There is absolutely no better place to begin that laudatory task than with the Federal Energy Administration.

I would like to remind those of my colleagues who served in the last Congress what our intentions were when we created this "Frankenstein." You will recall that we were reacting to the Arab oil

embargo, and to the angry voices of constituents who spent the better part of their day waiting on gasoline lines. The embargo could have served a useful purpose—it has the potential of waking us up to our alarming dependence on foreign sources of petroleum. We did, in fact, seem genuinely interested in restoring American energy independence for awhile, and in that short-lived period the FEA was born. I regret to say that it has fulfilled none of its promise.

What should be the purpose of a Federal energy office? We were under the impression that it was to foster American energy independence. What has it actually been doing? To be charitable, we could say it has accomplished nothing.

The truth, however, is that the FEA has not only failed to accomplish any of the ambitious goals of Project Independence, but it has actually worked against these goals.

Since its inception, the FEA has been concerned almost entirely with spreading a shortage around rather than curing the shortage. Instead of fostering increased exploration and drilling of domestic petroleum, FEA has toyed with various formulas of price controls designed to retard that drilling. Instead of encouraging development of our existing resources, the FEA has attempted to strangle every energy company in the Nation with miles of red tape.

I would just like my colleagues to look at the type of thing FEA spends its time doing. A very small oil company in my district that operates wells which the majors no longer consider productive sent me these forms. For a four-form monthly report, FEA sent along 21 pages of typed instructions—written in language that a battery of lawyers would take a week to translate. Our Nation's energy producers have to spend more time dealing with the FEA forms than with the search for more energy.

The high-handedness of the FEA is legendary. Right now, they are in the process of denying the small refiners the exemption Congress specifically granted them from the crude oil entitlements program. They shift around allocations at will, causing the greatest economic hardships. This fiefdom must be brought under control.

I submit to my colleagues that the FEA has simply not done the job for which it was created. The simple, eloquent proof of that statement is that our dependence on foreign petroleum has increased in the 2 years that the FEA has been in existence. The reason for that is clear to see—the FEA has been more interested in pursuing the impossible goal of cheap energy than in encouraging more energy production. It is more interested in price controls than in production. It is plainly a superfluous agency that is a drain on our tax dollars.

Finally, I would ask my colleagues to take a good look at the actual authorizations made in this legislation. The bill grants \$34 million for a computer model for Project Independence. If we do not know what is needed for that now, maybe the whole Federal Government should just close up shop. I would like to see the supporters of the bill

explain a \$34 million computer to their constituents. We have got over \$75 million for 2,120 more regulators in the Office of Regulatory Programs. I think our citizens are making it quite clear what they think of these Federal regulators. About the only thing that does not receive any money is a program to produce more American energy sources.

When we make a mistake, I think we ought to admit it. We made a terrific mistake in creating the FEA. It cost us 2 precious years in making our country self-sufficient in energy. We can correct that error now, save the taxpayers some money, and start getting serious about our energy problems. Defeating this bill is the only responsible course to take, and I urge my colleagues to do so.

Mr. ECKHARDT. Mr. Chairman, I yield 2 minutes to the gentleman from Colorado (Mr. WIRTH).

Mr. WIRTH. Mr. Chairman, recent statements concerning FEA's conservation program that appeared in the Extensions of Remarks of the May 24, 1976, CONGRESSIONAL RECORD make three general assertions:

First, FEA has mismanaged funds appropriated to it in fiscal years 1974 and 1975;

Second, FEA has placed undue emphasis on the use of contracts and cooperative agreements with other institutions; and

Third, ERDA would be more capable of performing FEA's conservation functions.

To substantiate the first assertion, the statement cited eight contracts which totaled \$566,500 or less than 2 percent of the funds appropriated to FEA's Office of Energy Conservation and Environment. It then asserted that these studies were examples of a wasteful use of Federal dollars.

For example, it cited a study by the Rand Corp. on "Energy Conservation in Lighting," as an example of the wasteful use of Federal funds. But it has not answered the complicated question addressed in that study:

"What is the overall energy savings potential of reducing lighting and converting to more efficient light sources in existing buildings as well as outdoor lighting?" This is just one of the questions focused on and answered by the Rand study, and is a part of the information needed in development of a broad conservation strategy.

Another study cited was the "Impact of the Energy Crisis on Disadvantaged Consumers." This study starts with the correct assumption that experts have openly disagreed about the impact of rising energy prices and that proposals to assist low-income persons must be based on data rather than assumptions which all too often are later revealed to be incorrect.

The attack on energy conservation further implied that the funds spent on a study conducted by the Aerospace Corp. to examine strategies for encouraging mode shifts in intercity passenger travel did nothing more than show that higher prices would reduce travel. Unfortunately the attack did not examine the results of this effort; had this been

done, it would have been found that the study's major conclusion was quite the opposite. It found the most effective energy conservation strategy would be to increase airline load factors, which would result in lower fares to travelers.

In another point, it is asserted that the carpooling study funded by FEA was "identical" with one previously funded by DOT. On the contrary, the studies were actually complementary rather than duplicative. The DOT study, which was initiated on a crash basis during the Arab oil embargo, was designed to assist State and local governments to establish carpool matching programs to reduce gasoline consumption for work trips. The FEA study, in contrast, was intended to analyze potential carpooling demand through diverting single-occupant automobile work trips to carpooling work trips and to estimate the energy savings which would result from various policies to encourage carpooling.

Finally, the attack on FEA conservation programs cited public opinion surveys as an example of another wasteful FEA program. Again the record was not reviewed. FEA's public opinion surveys were designed to gather a wide range of information to assist the agency in formulating programs to provide information that would be useful to all energy users. This requires data on public attitudes and awareness. An examination of the results of the surveys would have readily indicated that the results do not necessarily support any single view. Quite to the contrary, they often provide very interesting and insightful information about public opinions on the energy crisis.

The second general assertion made is that FEA has placed undue emphasis on the use of contracts or cooperative agreements to gather information or conduct programs. This, in my opinion, is preferable to FEA hiring 1,000 or 2,000 additional civil servants, who would then receive permanent employment rights. FEA's Office of Energy Conservation and Environment has taken the prudent course of utilizing the expertise that can already be found in other Federal agencies and private institutions through short-term contracts rather than by increasing the size of the Federal bureaucracy.

FEA's reliance on outside contractors raises the final general assertion; that is that ERDA would be more capable of carrying out FEA's conservation functions. Now, the facts demonstrate that of the \$75 million in ERDA's fiscal year 1976 conservation budget only about \$20 million is used in ERDA's national laboratories, and the remainder has been contracted out to industry or other Federal agencies. The emphasis on outside contractors is even more pronounced in those ERDA conservation programs directed at transportation, buildings or industry, as opposed to electric utilities or energy storage which account for over 80 percent of the ERDA conservation research done at the national labs.

In conclusion, it is quite apparent that some among us have failed to determine

the facts before launching into yet another diatribe against the Federal Energy Administration. The FEA's Office of Energy Conservation and Environment has provided the central focus for virtually all Federal conservation efforts. When it was established in 1974, it was given the awesome task of not only quantifying the potential for energy conservation in every major sector of the economy but also developing and implementing a program to insure that that potential is realized. Although the Office has unquestionably made several errors during the past 2 years, on balance it has done a remarkable job.

Currently the Office is dedicating most of its resources to those specific responsibilities given it by the Congress. During 1976, the Office will be developing and finalizing Federal guidelines for three major new conservation programs: The State energy conservation program, the industrial energy efficiency program, and the appliance efficiency and labeling program. I submit that we risk losing all the progress that has already been made toward the achievement of major energy savings if the Congress chooses to dismantle the Office of Energy Conservation at this time, even if its functions were transferred to ERDA or any other Federal agency.

Mr. BROWN of Ohio. Mr. Chairman, I yield 4 minutes to the gentleman from Pennsylvania (Mr. MYERS).

Mr. MYERS of Pennsylvania. Mr. Chairman, I, too, am concerned about the legislation in two areas; specifically, the extension of the FEA beyond the original concept of a temporary agency.

The second area is the growth of the FEA in numbers and pay scales, which, quite evident, have been built up in this so-called temporary agency. I agree with the initial legislation that in a period of crisis in developing a temporary agency it would be difficult to pull together qualified people without offering higher than average pay scales; however, I think we should look at where we find the FEA at the present time. Presently, the number of ES personnel in the FEA is extremely high. They have a total of 19. We can compare that to a much larger agency, such as the Veterans' Administration, which has seven.

The comparable number of employees for the FEA is 3,200; however, the Veterans' Administration, with only a 7 ES schedule level has 123,000 employees.

The average pay for FEA is higher, the ES schedule is higher than for any other agency. Some Cabinet levels have less numbers of ES personnel. For instance, the Department of Agriculture has 18.

HEW has 23.

HUD has 20.

The Interior Department has 18.

The Department of Labor has 16.

The Treasury Department has 21.

FEA presently has 19.

Mr. Chairman, during the amendment process I have a series of amendments which will attempt, No. 1, to limit the extension of FEA to no longer than 15 months, the end of fiscal year 1977.

One amendment will require a report

from the president through OMB to the Congress, indicating in what manner the responsibilities will be transferred to other Departments.

Mr. Chairman, I have a backup amendment to that which would simply limit the authorization of this bill to the end of fiscal 1977. Then there are two amendments which I would attempt to get at the problem that I see in pay scales for FEA, which appear to be out of line with other agencies and departments in comparison to the responsibilities and degree of scientific or technological skill that the agency needs in accomplishing its responsibilities.

Mr. DINGELL. Mr. Chairman, I yield 5 minutes to the gentleman from Texas (Mr. ECKHARDT).

Mr. SHARP. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. Eighteen Members are present, not a quorum.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to clause 2, rule XXIII, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

Mr. DINGELL. Mr. Chairman, I yield 5 minutes to my good friend, the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Chairman I rise in favor of the bill before us, the extension of the authorization of the Federal Energy Administration.

I have not been one of the admirers of the agency's operations, but if we should not extend its authorization, what would happen in effect, if no further action were taken, would be that precisely the same policies respecting energy which we have adopted in such substantive bills, as the Energy Policy and Conservation Act and which we have directed the executive department to administer would be performed by that agency through something like the Federal Energy Office which existed prior to the Federal Energy Administration.

I submit to the Members that this is certainly not a desirable approach. In the first place, it would call upon the President to dismantle the FEA and reassign its functions to some manner of organization that he might set up. At the outset, there would be some question as to whether he could merely retain the agency substantially as it now stands and designate it as an executive office—just make FEA, FEO. Perhaps he could do that.

Then, all we would have done is remove ourselves from any area of fashioning a program. It seems to me that that is very bad.

On the other hand, the President might attempt to redistribute various areas of authority to various other executive departments and agencies. If he did, of course, that would retard the entire program for a time. It would undoubtedly cost more money because it would occupy the time of many persons working for the various other executive agencies to absorb the reorganizational changes that would have taken place.

Let me go back a moment and describe to the Members how this entire program came into effect.

The original action taken by our committee was the act called the Emergency Petroleum Allocation Act of November 27, 1973.

That act dealt with several things. Its immediate purpose was to assure that certain products like home heating oil get to the east coast. It was essentially related to allocation.

Also, at that time there was a shortage of gasoline; and it was sought to assure distributors of gasoline that they would not be cut out, particularly independent distributors. It also provided for price controls on crude and on petroleum products.

Of course, at that time, there being no agency created by Congress, the authority was delegated by the President to the Federal Energy Office. That sort of thing would be re-created if we disestablished FEA.

Then an act called the Federal Energy Act of 1974 was passed. It was as the result of a bill that came out of the Committee on Government Operations, and it established this agency which we are now seeking to extend. Then we passed the Energy Policy and Conservation Act, giving to the Federal Energy Administration not only the authority with respect to controlling limitations on pricing, but some other extremely important authorities: The appliance labeling authority, the coal loan program, the State energy conservation provisions, and so forth.

Mr. Chairman, I think we acted properly in assigning those authorities to the FEA. If we should dismantle the FEA, the question would be: Where will these authorities be distributed? Perhaps the President will properly distribute them, but should not Congress make a determination on points like this? Is not the agency and its functions important enough for Congress to be concerned with them?

There has been an attempt in the House, in argument on the rule, to drum up some type of conflict—

The CHAIRMAN. The time of the gentleman from Texas (Mr. ECKHARDT) has expired.

Mr. SHARP. Mr. Chairman, I yield 2 additional minutes to the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. To continue, Mr. Chairman, there was an attempt in the debate on the rule to conjure up some type of dispute between our committee and the Committee on Government Operations. I think that was put to rest pretty well by the statement of the distinguished gentleman from California

(Mr. Moss), who is the ranking majority member of both that committee and the Committee on Interstate and Foreign Commerce.

However, Mr. Chairman let me point out why there is no conflict there. If we extend the authorization under this act, we do not in any manner prejudice the Committee on Government Operations from bringing out a bill that could reestablish the whole program. If the Committee on Government Operations decides, along with the gentleman from Indiana (Mr. FITHIAN) and the gentleman from Colorado (Mrs. SCHROEDER), that it would be desirable to give pricing authority to the Federal Power Commission—which I think would be a bad thing—the committee may do so. It may entirely revamp structural organization of the program dealing with energy policy. It may dissolve FEA and assign its authority to whomever it desires.

Therefore, Mr. Chairman, we are in no way by this act precluding that committee from exercising its function under the House rules.

Mr. Chairman, I strongly urge the support of the bill to extend the authorization of FEA.

Mr. BROYHILL. Mr. Chairman, I have no further requests for time.

Mr. SHARP. Mr. Chairman, I yield 3 minutes to the gentleman from Indiana (Mr. FITHIAN).

Mr. FITHIAN. Mr. Chairman, we are faced with a rather difficult situation because a very great many of us in the House do not wish to see the Federal Energy Administration continue to go on its bungling way, and yet we may or may not be ruled in order so as to offer a substitute. This explains the vigorous efforts we made to defeat the rule an hour ago. I think we now must address the House and address our own consciences as to the basic question.

The basic question is: Has the Federal Energy Administration so conducted itself as a regulatory agency that it ought to be continued; and if continued, for how long? The FEA does not merit a single hour of continued life.

One of the strongest oppositions I have to the committee bill is that it locks us into the continuation of the Federal Energy Administration for some 39 months. One does not have to be a great student of government to understand that once an agency is given a lengthy life span and a healthy budget, this House has precious little control over its actions. It is those actions to which many of us object on all sorts of grounds.

So, Mr. Chairman, I would hope that the committee will not contest the making germane of a substitute which will give those of us who find ourselves in an impossible situation, that is, either voting to continue the Federal Energy Administration for 39 months despite the fact that it has done nothing to merit that kind of stamp of approval, or vote to kill the Federal Energy Administration without taking any responsible actions as to where to put its functions. And that is precisely where the committee has those of us who: First, do not approve of the actions of the Federal Energy Commission, and second, do not

like to be forced into voting willy-nilly to simply shut it off without some responsible decision as to where its functions should go.

Mr. Chairman, I would like to use the remainder of my time to engage in a colloquy with the chairman of the committee, the gentleman from Michigan (Mr. DINGELL) and the gentleman from Texas (Mr. ECKHARDT) if I might.

I would like to ask whether these two influential and prestigious members of the committee will be opposing or raising a point of order as to the germaneness of a substitute amendment which has already been placed in the CONGRESSIONAL RECORD by the gentlewoman from Colorado (Mrs. SCHROEDER)? What is the thrust of the committee's thinking at this time?

The CHAIRMAN. The time of the gentleman has expired.

Mr. DINGELL. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, in response to the question raised by the gentleman from Indiana (Mr. FITHIAN), let me say that as manager of the bill it is my duty to see that the rules of the House are properly and fairly carried out and I am not able to make any commitment to do anything other than see that the rules of the House are properly carried out and protected. And that applies to the rule of germaneness. Despite the fact that it causes the gentleman from Indiana pain, I would also have to carry out my responsibilities in that regard.

I think the House is going to have to recognize some hard facts. The Nation is in the midst of an energy crisis, and although I commend my colleagues, the gentlewoman from Colorado (Mrs. SCHROEDER), and the gentleman from Indiana (Mr. FITHIAN), on their zeal, I must point out that their efforts are misguided. I think it is quite clear to anyone who has analyzed the facts in existence previous to the creation of the Federal Energy Administration—and I might add that I did not support the Federal Energy Administration with any great enthusiasm in its inception—that the chaos today and the Federal energy policy problems prior to the existence of the Federal Energy Administration were vastly larger than those which face us today. We had the Cost-of-Living Council, the Federal Energy Office; we had the Department of the Interior; we had the Federal Power Commission. I would point out that of all of the undistinguished agencies in Government, probably the most undistinguished of all is the Federal Power Commission. They have done nothing except obfuscate, delay, and waste the taxpayers' money and accomplish little of any significance that I can discern.

Laws entrusted to their administration are rarely adequately adhered to and are not properly administered; to turn any functions of FEA, which has from time to time not satisfied any of us, over to FPC would be simply to substitute a worse executor of the law for one who is doing the best it can.

Some other questions have been raised during the course of this discussion that

must be addressed by the House. What about allowing this matter to be considered by the Committee on Government Operations? The original legislation was introduced in February. The matter of jurisdiction over the extension of the FEA has long been available to the Committee on Government Operations. They could have raised that question and brought this legislation before the House any time they wanted to.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DINGELL. I yield myself 2 additional minutes.

There is nothing in the Rules of the House, nothing in the law, nothing anywhere which precludes the Committee on Government Operations or any other duly constituted and properly authorized committee of the Congress from coming forward with legislation which would alter the structure of FEA or bring out the proper delineation of its responsibilities, efforts, and authorities, or to disseminate those amongst other agencies. If the gentleman wants to set up one single energy agency in Government, he can offer legislation which might be referred to the House Committee on Government Operations. If that committee is content to adopt his views, I am sure we would have a bill on the floor. If the gentleman does wish to present some kind of proposal to the Committee on Government Operations, I would have no complaint about his going forward and being heard.

I would simply point out today to my colleagues that I think it is very important to note that member after member of the Commerce Committee, which has had jurisdiction of these matters for a good period of time, has pointed out that there is a need to see to it that EPCA and the other laws relating to the control of prices and the conservation of energy, which are part of the energy policy that the Congress enacted during the past session, are faithfully and properly carried out.

Mr. FITHIAN. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Indiana.

Mr. FITHIAN. I thank the gentleman for yielding.

Just prior to the distinguished chairman's arrival on the floor, I had said that one of the most objectionable features of his bill is that of extending the life of the agency for a full 39-month period. My question is simply this: Regarding those of use who want either to do away with the Federal Energy Administration and allocate its functions or make it more tractable, what is the chairman's position on that?

The CHAIRMAN. The time of the gentleman has expired.

Mr. DINGELL. Mr. Chairman, I yield myself one-half minute additionally.

The answer to that question is that we have a statute which is going to require about 39 months for price controls to be administered, and I think that we cannot administer those price controls in less time. If the Committee on Government Operations wants to change

the life expectancy of this agency, they can do so by presenting proper legislation on the floor.

Mr. Chairman, I reserve the remainder of my time.

Mr. ECKHARDT. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. Twenty-two Members are present, not a quorum.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

The CHAIRMAN. A quorum of the Committee of the Whole has not appeared.

The Chair announces that a regular quorum call will now commence.

Members who have not already responded under the noticed quorum call will have a minimum of 15 minutes to record their presence. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

| [Roll No. 314] | | |
|------------------|-----------------|----------------|
| Abzug | Fraser | Paul |
| Andrews, N.C. | Fuqua | Peyser |
| Andrews, N. Dak. | Gialmo | Pressler |
| Annunzio | Gibbons | Rallsback |
| Archer | Gude | Randall |
| Ashbrook | Harrington | Rees |
| Bell | Harsha | Rhodes |
| Bergland | Hawkins | Riegle |
| Bingham | Hays, Ohio | Rinaldo |
| Breaux | Hébert | Risenhoover |
| Brodhead | Hicks | Rodino |
| Brooks | Hinshaw | Rose |
| Brown, Mich. | Hutchinson | Rostenkowski |
| Burton, John | Jarman | Santini |
| Burton, Phillip | Johnson, Calif. | Sarbanes |
| Carter | Johnson, Colo. | Satterfield |
| Cederberg | Jones, Ala. | Scheuer |
| Clawson, Del. | Karh | Schneebell |
| Cleveland | Krueger | Seiberling |
| Conlan | Latta | Sikes |
| Conyers | Leggett | Stanton |
| Danielson | McCollister | James V. Steed |
| de la Garza | McEwen | Steelman |
| Diggs | Mathis | Stelger, Ariz. |
| Drinan | Matsunaga | Stuckey |
| Eckhardt | Meeds | Sullivan |
| Edwards, Ala. | Michel | Thompson |
| Erlenborn | Miller, Calif. | Traxler |
| Esch | Mills | Udall |
| Eshleman | Montgomery | Vanik |
| Fenwick | Moorhead, Pa. | Waxman |
| Fisher | Mosher | Weaver |
| Flynt | Murphy, N.Y. | Wiggins |
| Ford, Mich. | Nichols | Wilson, C. H. |
| Forsythe | Nix | Young, Alaska |

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. NATCHER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill H.R. 12169, and finding itself without a quorum, he had directed the Members to record their presence by electronic device, whereupon 325 Members recorded their presence, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal. The Committee resumed its sitting.

Mr. BROWN of Ohio. Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. PICKLE).

Mr. PICKLE. Mr. Chairman, I thank

the gentleman from Ohio for yielding me this time.

Members of the House, the other body is acting now on a matter relating to rule 6 and affects the question of entitlement. In the event that they do vote to disapprove the removal of the exemption that the FEA had ordered, that question will not come over here.

I must leave because I am chairing a meeting in Houston tomorrow on a subcommittee from the Committee on Ways and Means. I want to express this hope to the House that the question of disapproval should not be granted by this House. We ought to let the FEA work its will. With respect to what happened a year ago, I was one, along with the gentleman from Houston, in asking for the special exemption of the small refiners, but there has been a double dip, and I repeat, there has been a double dip to them. What has happened is that it hurts the small refiners.

Under the special entitlement program, many of our service station dealers are literally going broke because many of the branded dealers are having to pay more for the gasoline than the other dealers can buy it for.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DINGELL. Mr. Chairman, I yield 1 additional minute to the gentleman from Texas.

Mr. PICKLE. Mr. Chairman, I thank the gentleman for yielding me this additional time.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, I want the gentleman from Texas to know that I am fully in accord with the position he has taken on this matter. I hope the House will reject the disapproval resolution for the reason pointed out by the gentleman from Texas.

Mr. BROWN of Ohio. Mr. Chairman, I yield such time as he may consume to the gentleman from Indiana (Mr. HILLIS).

Mr. HILLIS. Mr. Chairman, I rise in support of H.R. 12169, a bill which provides for the continuation of the Federal Energy Administration for another year.

This agency was established 2 years ago to carry out the Nation's policy of obtaining energy independence from foreign sources within the next decade. Despite this clear mandate, unfortunately the agency has not made the progress that is necessary toward this vital goal.

The fault, however, does not lie at the door of the FEA but is the responsibility of the Congress. Every time the administration has made recommendations or sought action that would lessen our dependence on foreign oil, the Congress has rejected the request and usually moved in the opposite direction.

For example: Efforts to deregulate oil prices have brought price rollbacks; efforts to deregulate gas prices have thus far yielded only impasse; efforts to encourage the use of coal have stimulated strip mining restrictions and unrealistic regulation of coal burning; efforts to encourage more investment in nuclear

power generation have brought about requirements that would slow progress toward this form of electrical generation and make it more expensive; efforts to achieve stringent conservation of oil and gas have brought only increased reliance on these fuels.

Solar energy is the only field where Congress has responded and this will not pay off for many, many years.

The solution of our energy crises in this country should not be political but this Congress with its two-to-one control by the majority party has continually and systematically opted to follow the easy course and not to make the hard choices.

It is true to date that we have had mild weather in the winter and we had an economic recession which helped to reduce the demand. But the truth of the matter is, the congressional leadership has left this country in a distressing position of vulnerability and the Democrats as the majority party have to take full responsibility for this.

Mr. Chairman, this bill which is now being debated on the floor must pass this Congress and this Agency must be extended for another year. While its record is not perfect, its existence is absolutely essential. It gives a centralized direction leading to the solution of a very complicated and complex problem.

In a way we can look upon this as "sunset" legislation—that is a year from now we can review the record again and again decide what the status and necessity for the Agency will be in 1977.

But it is absolutely necessary in my opinion today to pass this bill and that is why I urge favorable consideration of H.R. 12169.

Mr. BROWN of Ohio. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. HANNAFORD).

Mr. HANNAFORD. Mr. Chairman, my opposition to the FEA authorization bill we are considering today is based on my experience in attempting to obtain a first-sale price for publicly owned oil that is equal throughout the country, particularly as it applies to California crude.

At the time the Emergency Petroleum Allocation Act of 1973 went into effect, a monopolistic pricing situation in California was resulting in a posted price of heavy gravity crude there of about \$1 per barrel less than crude of identical quality elsewhere in the country. That inequitable price was incorrectly assumed to be the fair market price by the FEA and was thereby locked in as a regulated price of \$4.21 for California crude instead of the \$5.25 price received elsewhere in the country.

Aside from the question of equity, this price is so low as to force discontinuation of production in many wells. Oil properties owned by the city of Long Beach have already shut-in wells amounting to a loss of production of 7,000 barrels per day. Within 40 months the total loss of production in my State will be over 50 million barrels.

Unfortunately, all of this lost production must be replaced with foreign oil, and at OPEC prices of more than double the price of the shut-in domestic production. Mr. Chairman, it is a situation in

which everyone loses: The Nation loses 50 million barrels of precious oil per year. The State and city governments lose millions of dollars in revenues and we will lose about 1,000 jobs in the Long Beach fields alone as a result of the shut-in wells. We are reaching the point at which the higher replacement cost of foreign oil will soon cause a higher price at the gasoline pump for the consumer. Within a year 35 percent of the 115,000 barrels per day of California publicly owned oil will be discontinued, and the price for replacement oil will be the OPEC price.

I have tried every avenue to resolve this problem for the past 15 months, and every attempt has been thwarted by incredible administrative delays and snarls. I have therefore concluded that the only solution is legislating that an equal price be allowed for equal quality crude in all parts of the country.

I regret that I have been unable to draft this legislation in such a way as to satisfy the chairman of the committee and the administration. I shall continue to work with them to try to draft such legislation. Until such amendment is included in the legislation I shall adamantly oppose the continuation of the Federal Energy Administration. I cannot support legislation that continues to inhibit the production of energy, to cost my State \$200 million annually by an unfair price, and will soon cause the loss of hundreds of jobs in my district.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. HANNAFORD. I yield to the gentleman from Michigan.

Mr. DINGELL. I thank the gentleman for yielding.

I am keenly sympathetic with the problem the gentleman refers to, and I want the gentleman to know that I am going to try and see that the FEA does correct this matter administratively. I am in full sympathy with justice on the side of the gentleman.

Mr. HANNAFORD. I thank the Chairman for that comment. I have had 15 months of sympathy, and it does not work very well. I am very glad that I have the Chairman's support; I am very glad I have Mr. Zarb's support. I hope we can get this resolved. If we cannot get it resolved administratively, I hope we can get it resolved legislatively.

Mr. Chairman, I yield back the remainder of my time.

Mr. BROWN of Ohio. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to observe to my colleagues in the House that we have been doing a little bit of time filing here. We still have time on the general debate on the FEA legislation before us, but, as I understand it, we are going to complete general debate and then rise so that we can have consideration of a motion to discharge the Committee on Interstate and Foreign Commerce on a resolution of disapproval which has been filed on a proposal of the Federal Energy Administration to equalize the small refiner exemption under the provisions of the EPCA legislation which was passed last year. This motion to discharge has failed

in the Senate by a vote of 58 to 27, and the gentleman from Texas (Mr. ECKHART) is anxious to go ahead and press the question of whether the House would discharge the committee and thereby have an opportunity for 10 hours of debate on whether or not we should disapprove the FEA action.

It is my feeling in a personal sense that the House should not discharge the committee and, therefore, should sustain the FEA action by not taking any action in the House, and I am anxious that the gentleman from Texas have the opportunity to raise the issue so that it can be quickly settled. We would have only 1 hour to debate the discharge matter.

The minority has a few minutes of time remaining, but there are no requests for that time.

If we have no requests on the majority side, then I assume that we could proceed with the reading of the bill, and have unanimous consent that the reading be dispensed with, rise, and then get to the effort to discharge by the gentleman from Texas, dispose of it, and then leave for our obligations that all of us have over the Memorial Day holiday, and perhaps we can still catch some airplanes.

Mr. DRINAN. Mr. Chairman, I rise in opposition to the extension of the Federal Energy Administration. While I admit that the FEA has made many positive contributions in helping to address this country's energy difficulties, it was created as a temporary agency and I believe that its role should now come to an end.

By proposing that the FEA's present role be ended, I am not suggesting that its many activities be ended. I have long favored the continuation of energy price controls as initially espoused in the Emergency Petroleum Allocation Act of 1973. However, I believe that this function can be performed very adequately by other Federal agencies, and this regulatory role does not in itself justify the continuation of the FEA.

Mr. Chairman, I have come to this conclusion after considering the inadequate job which the FEA has done in so many vital energy areas. These inadequacies are pointed out by the General Accounting Office, which issued findings on the Administration's job performance. The GAO concluded that the FEA had assembled insufficient energy data which did not fulfill its statutory mandate. Second, the GAO found that the FEA conducted almost no direct audits of crude producer operations, and failed in properly enforcing the energy pricing regulations. Third, it was concluded that the FEA gave too little priority to energy conservation.

The GAO's conclusions have strengthened my contention that the Federal Energy Administration has failed to do the job for which it was created. Due to these inadequacies, I filed legislation early in 1975 which would require that the FEA strictly enforce the regulations promulgated under the Emergency Petroleum Allocation Act. Because the Administration was so lax in enforcing existing pricing regulations for energy, widespread violations occurred. It was estimated that these violations and

fraudulent practices by refineries alone cost the consumer between \$1 billion and \$2 billion.

Mr. Chairman, more recently I have filed a second piece of legislation dealing with the FEA. This second bill, H.R. 12570, would transfer all compliance and enforcement functions of the Federal Energy Administration to the Secretary of the Treasury. This would mean that the Department of the Treasury would then enforce the price and allocation regulations which continue to govern our energy prices. By transferring the regulatory functions, we would ensure that energy prices were still regulated while removing this responsibility from the hands of the FEA.

While H.R. 12570 takes away just the regulatory functions from the Federal Energy Administration, I believe that we could follow a similar practice in giving other functions of the FEA to existing agencies. The worthy beginnings which the FEA has made in energy conservation could easily be switched over to the Energy Research and Development Administration, for example, while the Department of Commerce could take over the distribution of energy publications and energy tracts. In all, I feel that the splitting of the functions of the FEA could be handled with a minimum of disruption to this country's energy efforts.

Mr. Chairman, in view of the actions of the Rules Committee in refusing to waive points of order for the Schroeder-Fithian substitute which would have transferred the functions of the FEA to other agencies, it is obvious to me that the FEA will continue into fiscal year 1977. I think that it is highly unfortunate that the House membership was not given an opportunity to vote on the Schroeder-Fithian substitute. I opposed the rule for consideration of this bill for that reason. However, I hope that my colleagues will support other amendments that will improve the work of the FEA in Federal energy efforts.

Mr. FITHIAN. Mr. Chairman, we urge you to oppose the rule on H.R. 12169, the bill to extend the life of the Federal Energy Administration.

If the rule on H.R. 12169 is approved today it will cause Members to face an unfortunate choice: Either defeat the bill, killing the FEA without providing for an orderly transfer of those remaining functions which need to be performed, such as price controls, and thus leave reorganization to the discretion of the President, or support the bill, thus perpetuating an agency unworthy of our approval.

A rule such as that proposed for H.R. 12169 which forces Members to make a choice between these two irresponsible options can hardly be called open.

If the rule on H.R. 12169 is defeated, then the appropriate House committee—Government Operations—would then have an opportunity to fully examine and explore alternatives to FEA and could analyze alternative reorganization plans. It is only proper that this committee which has jurisdiction over governmental reorganization be given an opportunity to exercise its legitimate functions on this important legislation.

We should vote down the rule, thus opting for a proper review of an alternative solution which provides for the transfer of essential functions while dismantling the agency. This would permit the termination of the useless functions now being performed. Decisions on agency reorganization are a function of the Committee on Government Operations, not the Interstate and Foreign Commerce Committee. Defeat the rule and allow a proper review by Government Operations.

Those who want to kill the FEA should vote no on the rule.

Those who have attacked bureaucracy should vote no on the rule.

Those who are conscious of providing for orderly jurisdiction in the House should vote "No" on the rule.

Mr. DINGELL. Mr. Chairman, I have no further requests for time.

Mr. BROWN of Ohio. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. Pursuant to the rule, the Clerk will read the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment.

The Clerk read as follows:

H.R. 12169

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

AUTHORIZATIONS OF APPROPRIATIONS

SECTION 1. Section 29 of the Federal Energy Administration Act of 1974 is amended to read as follows:

"Sec. 29. (a) There are authorized to be appropriated to the Federal Energy Administration the following sums:

"(1) subject to the restrictions specified in subsection (b), to carry out the functions identified as assigned to Executive Direction and Administration of the Federal Energy Administration as of January 1, 1976—

"(A) for the period beginning July 1, 1976, and ending September 30, 1976, not to exceed \$8,655,000; and

"(B) for the fiscal year ending September 30, 1977, not to exceed \$33,324,000.

"(2) to carry out the functions identified as assigned to the Office of Energy Policy and Analysis as of January 1, 1976—

"(A) for the period beginning July 1, 1976, and ending September 30, 1976, not to exceed \$8,137,000; and

"(B) for the fiscal year ending September 30, 1977, not to exceed \$34,971,000.

"(3) to carry out the functions identified as assigned to the Office of Regulatory Programs as of January 1, 1976—

"(A) for the period beginning July 1, 1976, and ending September 30, 1976, not to exceed \$13,238,000; and

"(B) for the fiscal year ending September 30, 1977, not to exceed \$62,459,000.

"(4) to carry out the functions identified as assigned to the Office of Conservation and the Environment as of January 1, 1976—

"(A) for the period beginning July 1, 1976, and ending September 30, 1976, not to exceed \$7,386,000;

"(B) for the fiscal year ending September 30, 1977, not to exceed \$49,961,000; and

"(C) for the period beginning July 1, 1976, and ending September 30, 1977, to carry forward demonstration projects to improve electric utility load management procedures and regulatory rate reform initiatives, not to exceed \$13,056,000, of which not more than \$1,000,000 may be assigned for purpose of intervention or participation in State regulatory proceedings.

"(5) to carry out the functions identified

as assigned to the Office of Energy Resource Development as of January 1, 1976—

"(A) for the period beginning July 1, 1976, and ending September 30, 1976, not to exceed \$3,052,000; and

"(B) for the fiscal year ending September 30, 1977, not to exceed \$16,934,000.

"(6) to carry out the functions identified as assigned to the Office of International Energy Affairs as of January 1, 1976—

"(A) for the period beginning July 1, 1976, and ending September 30, 1976, not to exceed \$300,000; and

"(B) for the fiscal year ending September 30, 1977, not to exceed \$1,921,000.

"(7) to carry out a program to encourage the use of solar energy in commercial and other applications, not to exceed \$2,945,000 for the period beginning July 1, 1976 and ending September 30, 1977.

"(b) The following restrictions shall apply to the authorization of appropriations specified in paragraph (1) of subsection (a)—

"(1) amounts to carry out the functions identified as assigned to the Office of Communications and Public Affairs as of January 1, 1976, shall not exceed \$607,000 for the period beginning July 1, 1976, and ending September 30, 1976, and shall not exceed \$2,274,000 for the fiscal year ending September 30, 1977; and

"(2) no amounts authorized to be appropriated in such paragraph may be used to carry out the functions identified as assigned to the Office of Nuclear Affairs as of January 1, 1976.

"(c) The Administrator of the Federal Energy Administration shall—

"(1) submit to the Congress, not later than September 1, 1976, full and complete structural and parametric documentation, and not later than January 1, 1977, operating documentation, of the Project Independence Evaluation System computer model;

"(2) provide access to such model to representation of committees of the Congress in an expeditious manner; and

"(3) permit the use of such model on the computer system maintained by the Federal Energy Administration by any member of the public upon such reasonable terms and conditions as the Administrator shall, by rule, prescribe. Such rules shall provide that any member of the public who uses such model may not be charged more than the costs incurred by the Federal Energy Administration in using such model and assigning personnel to assist such member of the public during such member's actual use of such model."

Mr. DINGELL (during the reading). Mr. Chairman, I ask unanimous consent that further reading of section 1 be dispensed with, and that it be printed in the Record and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. DINGELL. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. NATCHER, Chairman of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the bill (H.R. 12169) to amend the Energy Policy and Conservation Act to authorize appropriations for fiscal year 1977 to carry out the functions of the Federal Energy Administration, and for other purposes, had come to no resolution thereon.

MOTION TO DISCHARGE COMMITTEE FROM FURTHER CONSIDERATION OF HOUSE RESOLUTION 1205, DISAPPROVING ENERGY ACTION NO. 2

Mr. ECKHARDT. Mr. Speaker, I move that the Committee on Interstate and Foreign Commerce be discharged from the further consideration of the resolution (H. Res. 1205), disapproving energy action No. 2 submitted May 12, 1976.

The SPEAKER. Is the gentleman in favor of the resolution?

Mr. ECKHARDT. The gentleman from Texas is in favor of the resolution.

The SPEAKER. The gentleman qualifies.

The Clerk will report the resolution. The Clerk read the resolution as follows:

H. RES. 1205

Resolved, That the House does not favor the energy action numbered 2 transmitted to the Congress on May 12, 1976.

The SPEAKER. Is the gentleman from Ohio (Mr. BROWN) opposed to the resolution?

Mr. BROWN of Ohio. I am opposed to the resolution, Mr. Speaker.

The SPEAKER. The gentleman qualifies in opposition.

The Chair recognizes the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Speaker, the matter we have before us is an extremely complex one. It is an action by the Federal Energy Agency with respect to a portion of the Energy Policy and Conservation Act which deals with entitlements to small refiners.

The Federal Energy Agency has been under considerable attack today by some who opposed the rule and by some who desire to amend the Authorization Act. I have defended the agency because I think as an institution it is a desirable body, but when one considers what the agency has frequently done one realizes its actions are subject to correction. Indeed I have in the past described the FEA as an army whose only strategy is retreat, and retreat leaving all of the weapons in the field.

Mr. Chairman, the agency has authority under the legislation that we passed to decontrol in certain areas and to alter some provisions enacted as law by issuing what is called an energy action to this body, which must be disapproved or else the dismantlement of that portion of the program will go into effect.

Now, to describe what the agency has been doing with respect to these, its children, these charges that we have placed with the agency, requires a reference to Greek mythology. Before the existence of the gods there were titans and one of them was named Cronus who was in the habit of eating his offspring. The FEA in issuing its energy actions eats the charges that we have given to it to perform certain duties under law. It is addicted to the practice of eating its offspring one at a time.

The first of these energy actions was the removal of all control of residual fuel oil, both allocation and price.

The second energy action, energy action No. 2, is to eat a second of its off-

spring, or actually in this case to destroy an act of Congress—that is to remove from the act an exemption from the entitlement program of small refineries; that is, refineries refining less than 100,000 barrels of oil per day for its first 50,000 barrels per day.

Now, this means that a refinery in that category may make runs up to 50,000 barrels per day of domestic crude without paying for any entitlements to run that crude. Such may be its own crude.

Now, the entitlement program is a program by which the Federal Energy Administration requires that the difference between the average price of oil bought by all refineries and the price paid by a single refinery which is cheaper, be the measure of "entitlements" which single refinery must buy to be "entitled" to run the cheaper oil through its refinery. This is a rough statement of the rule. It causes this result: It makes that refinery pay the difference between what they pay for the oil and the average price nationwide and pay an entitlement to other refineries that are paying above the average price. These latter are entitled to sell "entitlements" to make it come out as if both refineries had bought oil at the same price.

Special rule No. 6 is an exception to that program with respect to the first 50,000 barrels per day run by a refinery that does not run more than a total of 100,000 barrels per day. I submit that it is a good exception and it is almost the only means by which we give some small incentive to buy cheaper domestic oil. The point is that the small refinery gets the advantage, because it can buy cheaper domestic oil and then can sell the product made from that domestic oil to the consumer at a little less cost than it could if it were paying the average price for all the crude it runs or, more accurately, paying entitlements which bring about that result.

Thus the small refiner exemption gives a little advantage to the smaller refiner as against the big one. We felt that was desirable and passed it in the House, and it was passed in the Senate. We did, however, provide in the bill that the Federal Energy Agency could alter a program of this nature.

So section 403 of the Energy Conservation Policy Act does give FEA the power to modify the exemption for small refiners, but it does not provide that FEA can eliminate it. In fact, this was discussed on the floor of the Senate. Senator JACKSON emphatically stated that the regulation was amendable by the President, "but not to the extent of wiping out the exemption in its entirety." That was said in debate in the Senate in construing the meaning of the statutory language.

Mr. WAGGONER. Mr. Speaker, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Louisiana.

Mr. WAGGONER. Mr. Speaker, on the point of wiping out the exemption in its entirety, does the FEA proposal propose that the entire 100,000 barrel exemption be wiped out, or just the first 50,000?

Mr. ECKHARDT. Well, there never

was an exemption for more than 50,000, and it would wipe that entirely out.

Mr. WAGGONER. But the law provides for the first 100,000, does it, on a 100,000 barrel exemption?

Mr. ECKHARDT. No, it provides that a refinery that does not produce more than 100,000 barrels a day shall be entitled to an exemption, but not in excess of 50,000, and that entire exemption is wiped out by the proposal.

Now, the original proposal of the FEA, was that the small refinery exemption be reduced in such a manner that the refinery would not have more than 1 cent differential in advantage on gasoline price. That is what FEA heard.

FEA heard the question of whether or not the exemption should be so reduced or eliminated, and that is how the notices went out. There was not one word in the notice that what is called the "small refinery bias" would be increased.

So, what FEA ultimately did is something that it had not notified the persons coming before the agency that it was going to do. It wiped out entirely the small refinery exemption and replaced it with an increase in what is called the "small refinery bias." That affects people quite differently. The bias gives no advantage, as such, to cheap domestic oil. It creates no incentive to buy oil cheap and sell the product cheaper to the consumer. It merely gives an advantage, or a bias, in favor of all small refineries, whatever side they may be on on the entitlement program.

Now, I would like to say to my colleagues that I know they are restless with the complexity of this issue, and I do not believe that we should have been presented with such a complex issue without the agency having presented that matter for hearing and argument by those affected.

That is precisely what I object to.

There may be some merit to redrawing, redrafting, rebalancing the various process through which small refineries are affected. But there is no excuse for reducing the net advantage to small refineries by about a quarter of a billion dollars per year without submitting the whole proposed program for hearings and expression of views by those affected. I am talking about taking into account both the bias and the exemption. There is no excuse for changing a quarter of a billion dollars a year from the hands of small refineries and placing it in the hands of large refineries without full opportunity for those affected to be heard on this precise change proposed to be made.

Of course, the majors contend that they are operating under certain disadvantages because the small refinery gets to buy its oil cheaper. But I submit to the Members that there is plenty of room, if the majors really want to compete for them, to somewhat reduce their profit margins, and let their distributors match the prices of those selling the product of the small refinery.

The profit margin, in the case of Exxon, runs about 5.9 percent. That is a profit margin on the product. That is not earning on equity. The percentage of

earnings on equity for Exxon in the first quarter of 1976 is 16.1 percent. That is a lot of margin to deal in if one wants to compete with small refineries. There is a lot of room there, both in the profit margin and in the return on equity, to compete with most anybody; 16.1 percent is a darned good earning on equity for any company. We have the same figure, approximately, for Shell, 16.4 percent. In the first quarter of 1976 they had a profit margin of 9 percent on their product. There is plenty of room there to reduce the price to the retailers in order to compete. In the case of Continental Oil Co., for the first quarter of 1976, it was 10 percent return on equity, and 6.8 percent profit margin. And so it goes.

I submit to my colleagues that this is what we ought to do: Simply vote up the resolution of disapproval. We will not thereby prohibit FEA from addressing this question from there. Let them come back to us with facts and figures after a full hearing on the precise plan proposed. Let them give an opportunity to persons affected thereby to have their input. We give them that input when we are dealing with subjects like this. We call them before the committee and they testify before the committee on the bill that is going to the floor.

In this case, FEA has simply put up one bill. It is as if you take up one bill and hear it and then pass another bill.

This energy action numbered 2 will simply wipe out one policy established by Congress, after inadequate hearings, after no findings of the actual situation in the marketplace not a single figure given. The total testimony taken by the FEA was that they had information that X company was at a disadvantage as to their company. No accounting process was applied to determine whether that was true, and how much. They simply came in with what they had previously concluded was the right thing.

I was the one who drafted the small refinery exemption, and I think it is a good one. When I drafted it, the FEA came in and said they did not like it. They have not liked it since the beginning. So they were not concerned with finding out about what people thought about it, or how it actually worked.

Though it only went into effect around the first of this year, they have had plenty of time to look at it and come out with some real figures, but they have not done so. They are simply determined to eat their children—their charges under the law—one at a time.

Mr. Speaker, I noted the interest of the chairman of the committee, and I do want to yield to Members on the floor who are interested in this question and who would like to comment. The chairman of the subcommittee, I believe, has some disagreement with me on this point, and I certainly would not like to preclude his presenting his points.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER. The Chair recognizes the gentleman from Ohio (Mr. BROWN).

Mr. BROWN of Ohio. Mr. Speaker, I rise in strong opposition to both the motion to discharge the committee and to the resolution of disapproval of FEA's EPCA proposal to equalize the present

imbalance created by entitlements between small refineries.

EPCA provides 1 hour of debate on the motion to discharge offered by the gentleman from Texas (Mr. ECKHARDT). If Mr. ECKHARDT's motion to discharge passes, the House moves to consideration of the Eckhardt resolution to disapprove and the law assures 10 hours of debate on such resolution.

If we vote down the Eckhardt motion now before us, there will be no issue of disapproval before us, we will adjourn, and the FEA modification will take effect. I urge that we vote down the Eckhardt motion to discharge.

The Subcommittee on Energy and Power held hearings at which a variety of witnesses were heard and neither the subcommittee nor the full committee took any action.

Under the law by which the President is authorized to propose decontrols, no action by the Committee on Interstate and Foreign Commerce is tantamount to approval of the President's proposal. For the House to move in the face of its committee's tacit determination that the FEA proposal should not be disapproved would be most inappropriate.

Mr. Speaker, in addition, this FEA proposal is necessary to correct a very inequitable situation where one small refiner may have as much as a 17 cents per gallon or \$7.14 per barrel advantage over another.

For more than a year, the Federal Energy Administration has had in effect a so-called entitlement program. The purpose of this program is to equalize the varying costs that refiners have to pay for crude oil. "Old oil" sells at prices of about \$5 while "new" and imported oil sells at \$11. The program requires that those refiners having access to a larger proportion of cheaper "old" oil purchase entitlements to use such oil by paying cash to refiners who have a larger proportion of more expensive new oil.

The entitlements program has included a small refiner bias which gave refiners of less than 175,000 barrels per day some relief from the requirements of the entitlements program in order to preserve their competitive viability vis a vis larger domestic refiners. The bias was based on a sliding scale ranging from 2.4 cents per gallon for the very smallest refiners—those refining 10,000 barrels a day or less—to 2 cents per gallon for those refining 100,000 to 175,000 barrels a day. Under the bias, small refiners having a larger proportion of "old oil" and thereby required to buy entitlements would be credited with the amount of the bias against their entitlement purchase obligations each month; while those small refiners who were short of old oil and thereby sellers of entitlements would actually receive a dollar amount of additional entitlements equal to the bias.

A further advantage was provided to a certain group of these refiners in section 403(a) of the Energy Policy and Conservation Act of 1975 (EPCA). Under this, small refiner buyers of entitlements—but not small refiner "sellers"—were exempted from entitlement purchase requirements for the first 50,-

000 barrels a day produced by those refiners who produced 100,000 barrels per day or less as of January 1, 1975. This provision was implemented into FEA regulations on January 6, 1976 as the so-called special rule no. 6.

Section 455 of the Energy Policy and Conservation Act permitted the FEA to eliminate or modify the small refiners' exemption by amending the entitlements regulation. Such amendment is subject to disapproval by either House of Congress and must be based on a finding that the exemption results in unfair competitive advantage or otherwise precludes the attainment of the objectives of the Emergency Petroleum Allocation Act—EPAA—relating to matters such as preservation of the competitive viability of nonbranded independent marketers and branded independent marketers.

FEA has found that, since the exemption only applies to certain refiners—that is, entitlements purchasers—differentials of crude oil costs between small refiners ranged as high as 17.8 cents per gallon in the same district. Therefore, the FEA has submitted to Congress a proposal to eliminate the exemption created by the Energy Policy and Conservation Act for small refiner purchasers. At the same time, FEA will increase the amount of bias in the original entitlement regulations for both small refiner sellers and small refiner buyers of entitlements so as to give them an additional advantage vis-a-vis larger domestic refiners. The new bias begins at 4.4 cents per gallon for the refiners of 10,000 barrels or less and is higher than the previous bias for oil refiners of less than 100,000 barrels per day. According to FEA, the effect of the combination of the increase in the bias and the elimination of the Special Rule No. 6 exemption will be to significantly reduce the differential in crude-oil costs among small refiners in the same district.

Such an action is necessary to rectify the most inequitable situation that now exists among our Nation's small refiners. I urge defeat of the motion.

Mr. BEDELL. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Iowa.

Mr. BEDELL. Mr. Speaker, I am not a specialist on this legislation at all, and I am not even sure how I will vote, but did I understand the gentleman from Ohio (Mr. BROWN) in his opening remarks to indicate that if we pass this resolution, it would be possible to have 10 hours of debate and that we should not pass it because of the fact that we would have to take that time in discussing the issue? Is that the implication the gentleman is making?

Mr. BROWN of Ohio. No, I was merely describing the situation that exists.

Mr. BEDELL. What was the purpose in explaining the situation?

Mr. BROWN of Ohio. So that my colleagues would understand the situation. I thought some Members might not be aware of the law that provides for the method by which the FEA proposals are considered by the House of Representatives.

Mr. BEDELL. If the gentleman will yield further, as one Member of this

body, I would hope that we would try to discuss the issues and come to answers based upon what should be done rather than upon how much time it is going to take to do whatever needs to be done.

Mr. BROWN of Ohio. I could not agree with the gentleman more.

The balance of my remarks were addressed specifically to the merits of the issue, which I think do not lie on the side of the gentleman from Texas (Mr. ECKHARDT).

Therefore, I would be delighted to have the support of the gentleman from Iowa (Mr. BEDELL) when we have that vote, hopefully, in the next few minutes.

Mr. ECKHARDT. Mr. Speaker, I yield myself 1 additional minute.

Mr. Speaker, I do want to clarify the parliamentary procedure. We are now acting on a motion to discharge the Committee on Interstate and Foreign Commerce from further consideration of House Resolution 1205, which we must do in order to come to that rather truncated procedure by which we either agree or disagree to an energy action. This action is by no means in derogation of the committee, but it is a procedure which is the only one under which we can act.

If we should pass the motion to discharge, we would then be in the position of debating the question of whether or not to pass House Resolution 1205, which is a motion that strikes down the energy action.

Mr. Speaker, I may say to my colleagues that I feel we will have completed the substantive debate at the end of the motion to discharge; and I would not be inclined and I do not believe any of my colleagues would be inclined to drag the matter out.

The SPEAKER. The time of the gentleman from Texas (Mr. ECKHARDT) has expired.

Mr. ECKHARDT. Mr. Speaker, I yield 5 minutes to the gentleman from Michigan (Mr. DINGELL).

Mr. DINGELL. Mr. Speaker, I thank my colleague, the gentleman from Texas, for yielding to me and I rise in support of energy action No. 2. I rise in opposition to the discharge of the Committee on Interstate and Foreign Commerce. I rise in opposition to the motion which would disapprove energy action No. 2. I would like to explain to my colleagues the reason.

The root of the problem before us lies in the entitlement system which is a system of purchase permits for the processing of low cost oil.

EPCA, as finally adopted in the Congress, provided an exemption for about 56 of the 112 small refiners, relieving them of their obligation to purchase entitlements for the first 50,000 barrels of production. This gave them an advantage in the market place, at the retail level, of about 13 cents a gallon at the maximum and somewhat less on down through the scale.

The consequences of the exemption from purchasing entitlements was that the marketplace was skewed at every level. Some small refiners, about 56 in number, were badly hurt by this exemption. All of their jobbers and all of their

retailers were hurt. Others received a striking economic advantage and their jobbers and retailers were not hurt. The majors and their jobbers and their retailers were all hurt.

Energy action no. 2 which is now before us would terminate the special preference which is given to the small section of the refining, wholesale, and marketing industry of the petroleum business that exists because of the exemption.

The Federal Energy Administration has tried to correct this situation by eliminating the small refiner exemption and by further skewing FEA's pricing regulations further in favor of the small refiners in general.

The previous situation under the small refiners' exemption was that 56 of the small refiners were benefited and the other 56 of the 112 were hurt. The jobbers and the wholesalers of both the majors and the nonexempted small refiners were badly hurt. A lot of the gas station operators are finding their prices skewed against them as opposed to their competitors by as much as 13 cents a gallon.

The consequence of the FEA action will be to restore fairness as between the small refiners and to restore fairness as regard the wholesalers and the retailers of the majors.

In essence, this is a procompetitive act by the FEA. It is an act which will significantly benefit the small refiners all over, which will benefit their jobbers and their retailers, and which will benefit the jobbers and the retailers of the majors.

Mr. Speaker, the question before the House is most complex. The House is called upon to review a proposal by the Federal Energy Administration to revoke an existing exemption in the crude oil entitlements program. To appreciate the effect of the FEA proposal requires some background information.

What is the entitlements program?

The entitlements program is an FEA-administered system which attempts to promote competition in the oil industry by equalizing the crude oil acquisition costs of refiners. Because domestically produced "old oil" sells for substantially less than "new oil" or imported crude, refiners with their own sources of old oil, including many of the major oil companies, would have substantially lower raw material costs than refiners dependent upon higher priced imported oil. These low cost refiners could destroy their independent refinery competition by underselling—of course, after their competition was destroyed, these low cost refiners could increase their prices and profits with impunity.

The entitlements program requires that those refiners with below average crude oil acquisition costs purchase entitlements from those refiners with above average crude oil acquisition costs. The results of these payments are to raise, to approximately the national average level, the crude oil acquisition costs of entitlement purchasers—old oil-rich refiners. The corollary result is to reduce, to approximately the national average level, the crude oil acquisition costs of entitlement sellers—old oil-poor refiners.

Entitlement purchasers recoup their payments through the prices they may charge for their refined petroleum products. Entitlement sellers are enabled to reduce their prices by reason of the receipt of entitlement payments. The result is procompetitive and assists small and independent refiners.

What, then, is the small refiner exemption?

Because many aspects of the allocation and price control system may impact disproportionately upon smaller firms, the present entitlement program includes a built-in smaller refiner bias. This bias reduces the purchase obligations of smaller refiner entitlement purchasers and increases the value of entitlement sales by small refiner entitlement sellers. This bias is not under review today.

What is under review today is a further exemption from the entitlements program which is enjoyed solely by small refiners who must purchase entitlements—that is, small refiners with below average crude oil acquisition costs resulting from above average volumes of old oil. This exemption applies to small refiners with less than 100,000 barrels per day throughput. It totally exempts these small refiners from the obligation to purchase entitlements obligations with respect to the first 50,000 barrels per day of crude oil received.

What has been the effect of this exemption?

This exemption has given the small refiners which benefit from the exemption 3 cents per gallon to over 21 cents per gallon price advantage. The magnitude of this advantage has had several unintended and undesirable consequences. While major oil companies, as a group pay much of the price for this exemption, they alone are not affected. Many small refiners have suffered competitive injury as a result of this exemption. Small refiners which are sellers of entitlements have seen their entitlements benefits reduced as a result of this exemption. In addition, small refiners which purchase entitlements but which receive no benefits from the exemption—that is, those refiners with a capacity of 100,000 to 175,000 barrels per day—have had their obligations increased as a result of the small refiner exemption. Thus, many small refiners are directly disadvantaged by this exemption by an amount of approximately \$4.7 million per month. In addition, small refiners are placed at a severe competitive disadvantage if they compete in the same market area with a small refiner which is a beneficiary of this exemption. The consequences of this competitive disadvantage may spell economic death for these small refiners. This would be a most undesirable, anticompetitive consequence.

Another unintended consequence of this exemption has been its impact upon small marketers—individual branded retailers and jobbers—who are not supplied by refiners which benefit from the exemption but who must compete in the marketplace with retail outlets supplied by, and in many cases run by salaried employees of, small refiners which benefit from the exemption. Thus, the very

smallest members of this industry, the retailer and the jobber, are often faced with pump prices for gasoline supplied by small refiners which benefit from the exemption, which are less than the branded dealers' wholesale cost. Competition in this situation is impossible.

What does FEA propose?

FEA proposes to remove the selective and ill-focused benefits of this exemption and replace the exemption with an increase in the small refiner bias. This modification will distribute benefits across the board to small refiners which sell entitlements, as well as to those which have purchase obligations. The modification will result in a flow of benefits to small refiners, as a class, from major oil companies in the amount of \$40.3 million per month. The present exemption benefits only 56 small refiners, while disadvantaging nearly an equal number of small refiners. The proposed FEA modification will benefit 112 small refiners, twice as many as the current exemption. The dollar amount of this flow is also targeted to yield the greatest benefits to the smallest refiners. The combined effect of the redistribution of these benefits and the reduction in the total amount of the benefits is to avoid the market consequences of the present exemption. The proposed modification by FEA will avoid unfair market consequences and unintended suffering by retailers and jobbers who cannot defend themselves against subsidized competition by a small refiner through salaried employee-operated retail outlets. Let us not forget that by comparison to Exxon, Texaco, Mobil or Gulf, small refiners are indeed small. However, by comparison to a single Exxon dealer or Texaco jobber, these small refiners are very large.

A balance must be struck which flows benefits to small refiners, both entitlement purchasers and sellers, in order to promote competition. But that balance must assure that small retailers and jobbers are not destroyed.

What must the House do?

If the House does not disapprove this proposal, Energy Action No. 2, it will become effective automatically. Therefore, I urge you to vote "no" on the resolution of disapproval.

Mr. HUGHES. Mr. Speaker, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Speaker, I have a great deal of respect for my friend and colleague, the gentleman from Michigan (Mr. DINGELL) and I wonder if the gentleman can tell me whether or not his subcommittee has taken any testimony on this subject as the basis for making the conclusion that this would restore equity.

Mr. DINGELL. Mr. Speaker, the gentleman from New Jersey raises a very good question and I thank the gentleman and commend him for it.

The answer to the question is yes. To be sure, the transcript of the hearings cannot be presented to the House today, but there is a document entitled Proposed Modification of the Small Refiner Entitlement Purchase Exemption—Energy Action No. 2—which was prepared

by the staff of the Committee on Interstate and Foreign Commerce, and I would particularly commend to the gentleman pages 3, 5, and 7 which set out with some clarity the points which I have made, which is information which the subcommittee received as far as those testifying.

Mr. HUGHES. Mr. Speaker, will the gentleman yield further?

Mr. DINGELL. I yield to the gentleman from New Jersey.

Mr. HUGHES. Was testimony taken from those who would be affected by this modification, the independents?

Mr. DINGELL. We solicited the testimony of everyone, and we had a number of small refiners, a number of jobbers, and a number of small retailers who came in and pleaded with us to support this action because of the anticompetitive effects of small refiner exemptions and the desperately bad effect upon small business interests of the small refiners which would be determined by this action.

The SPEAKER. The time of the gentleman has expired.

Mr. ECKHARDT. Mr. Speaker, I yield 2 minutes to the distinguished chairman of the Committee on Interstate and Foreign Commerce, the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Speaker, I will be very brief. First I would like to compliment the gentleman from Texas (Mr. ECKHARDT) on the courage he has exhibited in bringing this to floor of the House. I think he is doing a great service to the country by bringing the issue here so that we may debate the facts and arrive at a reasoned judgment.

I have changed my mind on the proposition since yesterday and the day before because of additional information which has been brought to my attention. I am a little bit like Lincoln in this regard. I try to change my mind if I get different views and learn something more about a subject, and I have.

I want to say again on behalf of the gentleman from Texas (Mr. ECKHARDT) and the gentleman from Michigan (Mr. DINGELL) and the rest, that I think the gentleman from Texas had done a great service for his country. It took courage to do what he has done to bring us here to debate this issue.

And I would say that the agency has been remiss in a lot of their activities, Mr. Speaker, and in the fact that the resolution which they put into the Federal Register on modification of the exemption was changed considerably from that which was submitted to the House of Representatives. There should have been some facts on that and an explanation of why these changes were made.

Mr. Speaker, I have reasoned that this will probably equalize to some extent the exemptions in the independents. I have a promise from the Deputy Administrator of the FEA that this will not raise prices of gasoline in the country.

There is one other bad effect that I think the resolution probably has, and that is the fact that it does not provide incentive to use American oil. And I believe that the discovery and use of our domestic energy resources must be en-

couraged if we are ever to achieve energy independence.

I say again that the proposition I believe is a fair proposition, which I will not oppose. But again I want to compliment the gentleman from Texas for bringing it to the floor so that it could be discussed and we could express our hope that the information and data supplied with any future proposals will be more detailed.

I thank the gentleman.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself 1 minute, and after that I trust that we will be able to proceed immediately to a vote.

Mr. Speaker, it has been stated here that the final FEA proposal was quite different from the original proposal. This is not quite correct—the original proposal would have, in effect, eliminated the small refiner exemption, but would have allowed up to 1 cent per gallon advantage to remain for the entitlement buyers. This 1 cent was over and above amounts received under the small refiner bias—FEA, March 4, 1976, Notice of Proposed Rule-making page 11.

The final proposal merely extended this increase over the present bias to the other group of small refiners—the entitlement sellers, so that all small refiners get an increased benefit.

Mr. Speaker, I reserve the balance of my time in the hope that we can proceed to a vote.

Mr. ECKHARDT. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. RUSSO).

Mr. RUSSO. Mr. Speaker, I urge my colleagues to support the proposal presented by the Federal Energy Administration discontinuing special rule No. 6.

This action represents at least a partial attempt by the Federal Energy Administration to restore a measure of equity to the entitlements program—and we must not forget that this program, when adopted in November of 1974, was designed to equalize crude oil costs among all refiners.

Under the terms of special rule No. 6, small refiners with crude oil runs ranging between 50,000 and 100,000 barrels per day are allowed a partial exemption from the purchase of entitlements, with a limit of 50,000 barrels per day on the total amount of the exemption.

What has the effect of special rule No. 6 been? Examine the testimony of Frank Zarb, head of the Federal Energy Administration:

First, the special rule grants certain small refiners benefits disproportionate to their actual needs, thereby providing them with an unwarranted competitive advantage over other refiners (including many small refiners) to such an extent as to be inconsistent with the objectives set forth in section 4(b)(1) of the EPAA.

Second, the resulting cost disparities place independent marketers supplied by non-exempt refiners, small and large, at a serious competitive disadvantage vis-a-vis marketers supplied by exempt refiners.

Third, it provides incentives for small refiners benefiting from the exemption to curtail their crude runs in certain marketing situations by reducing purchases of domestic upper tier and imported crude oils, thus acting to decrease the availability of certain

products in certain market areas served by small refiners.

Fourth, it acts as a disincentive for small refiners to expand their refining capacity beyond the limit of 100,000 barrels per day set forth in the special rule.

I agree with one refinery executive who told the Federal Energy Administration in March of this year that special rule No. 6 is "totally unfair and competitively devastating."

Again, Mr. Speaker, I urge this House to vote for equity by voting against the resolution of disapproval.

Mr. ECKHARDT. Mr. Speaker, I find today that I showed more courage yesterday, when I decided to wage this fight, than I thought I did. But I still think I am right. The point that is made here is that there can be no proper, deliberate consideration of an action of this importance—which takes approximately a quarter of a billion dollars out of the hands of small refiners and puts that quarter of a billion dollars in the hands of others—there can be no proper consideration in a half a day of hearings with that small notice that a disapproval petition resolution permits.

The point I am making here is simply this: That there is a way to make FEA act responsibly. There is a way to force the FEA to place before the public in advance of hearings the order which it tentatively plans to issue, and that way is to disapprove its energy submission by a resolution of disapproval. There is no other way to do it. There is no other way to get appropriate and necessary hearings. There is no way that we can make that agency responsible other than by refusing this order.

If we refuse the order we do not necessarily continue the precise program that existed under regulation No. 6, but we call upon the agency to rectify the unfair procedural action involved, and we call upon them to pay some more attention to the problems of small refiners.

Perhaps they should reduce the small refiners' exemption and at the same time increase the small refiners' bias. But what I have got to say is that when they have a hearing on one proposed order and they come out with a decision on another and when this body and its committees have only a half day to permit interested people to come in and express their positions, we do not have adequate process. We can get that adequate process by voting the matter down.

If the matter then comes back to us in a modified form or it comes back in the same form after letting people comment on the effects on the refiners, why, we may very likely approve it.

Why are 56 refiners affected favorably by this exemption and not the others? It is because they are using domestic oil, and in many instances they are using their own oil and they have to pay a refiner that is using foreign oil to use their own oil. That is why. So I suggest to the Members that this question needs much deeper consideration and much fairer process than has been accorded to it by the FEA.

Mr. WAGGONER. Mr. Speaker, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Texas.

Mr. WAGGONER. Mr. Speaker, I am conscious that the gentleman predicated his position upon the big word "if," saying if it comes back to us and if we vote it down. If we vote it down and it does not come back to us, would we not be continuing a greater inequity?

Mr. ECKHARDT. If they change it at all, it must come back to us.

Mrs. MINK. Mr. Speaker, I rise in opposition to the motion of disapproval concerning energy action No. 2 which is the Federal Energy Administration's proposal to modify the small refiner exemption contained in the Energy Policy and Conservation Act. The FEA proposition eliminates special rule No. 6 contained in section 403 of the act, which in my opinion, presently contains gross inequities leading to great distortion in the price of crude oil and gasoline throughout the country.

In my State of Hawaii, gasoline prices range from 70 to 75 cents per gallon creating severe economic pressures on our business community as well as the general population. Our independent refinery is required to process the most expensive crude oil, primarily due to Hawaii's unique geographical location, and receives no benefit from this special exemption.

The purpose of the Federal Energy Administration's crude oil equalization program is to equalize cost of crude oil to small refiners. However, this exemption creates disparities between small independent refiners and pits them against each other. Because of special rule No. 6, many independent refiners find their entitlements reduced and, as a result, must contribute to this subsidy. During the month of March, this subsidy exceeded \$33.5 million to 12 companies far from Hawaii. Certainly, this was not the intent of Congress to have Hawaii or any other State subsidize the excessive profits of a few companies.

Let me emphasize here that the FEA proposal simply reallocates what is at present excessive subsidies to a few small refiners to all small refineries. It falls directly within the intent of Congress to assist small refiners as a class. I believe that even the companies who are exempt will admit the present structure under special rule 6 gives them more than is needed or justified. This inequity is not only felt by the refiners, but by everyone from the corner service station to the customer.

Furthermore, unless this discriminatory provision is eliminated, the very existence of some of our small refineries will be in jeopardy, while the profits of a few will continue to grow. The FEA has submitted a proposal which will correct these unwarranted disparities I have just mentioned, and therefore urge my colleagues to oppose the motion for disapproval of energy action No. 2, and allow the agency's modification to stand.

Mr. DINGELL. Mr. Speaker, the question before the House is most complex. The House is called upon to review a proposal by the Federal Energy Administration to revoke an existing exemption in the crude oil entitlements

program. To appreciate the effect of the FEA proposal requires some background information.

What is the entitlements program?

The entitlements program is an FEA-administered system which attempts to promote competition in the oil industry by equalizing the crude oil acquisition costs of refiners. Because domestically produced "old oil" sells for substantially less than "new oil" or imported crude, refiners with their own sources of old oil, including many of the major oil companies, would have substantially lower raw material costs than refiners dependent upon higher priced imported oil. These low cost refiners could destroy their independent refinery competition by underselling—of course, after their competition was destroyed, these low cost refiners could increase their prices and profits with impunity.

The entitlements program requires that those refiners with below average crude oil acquisition costs purchase entitlements from those refiners with above average crude oil acquisition costs. The results of these payments are to raise, to approximately the national average level, the crude oil acquisition costs of entitlement purchasers—old oil-rich refiners. The corollary result is to reduce, to approximately the national average level, the crude oil acquisition costs of entitlement sellers—old oil-poor refiners. Entitlement purchasers recoup their payments through the prices they may charge for their refined petroleum products. Entitlement sellers are enabled to reduce their prices by reason of the receipt of entitlement payments. The result is pro-competitive and assists small and independent refiners.

What, then, is the small refiner exemption?

Because many aspects of the allocation and price control system may impact disproportionately upon smaller firms, the present entitlement program includes a built-in smaller refiner bias. This bias reduces the purchase obligations of smaller refiner entitlement purchasers and increases the value of entitlement sales by small refiner entitlement sellers. This bias is not under review today.

What is under review today is a further exemption from the entitlements program which is enjoyed solely by small refiners who must purchase entitlements—small refiners with below average crude oil acquisition costs resulting from above average volumes of old oil. This exemption applies to small refiners with less than 100,000 barrels per day throughput.

It totally exempts these small refiners from the obligation to purchase entitlements obligations with respect to the first 50,000 barrels per day of crude oil received.

What has been the effect of this exemption?

This exemption has given the small refiners which benefit from the exemption a 3-cents-per-gallon to over 21-cents-per-gallon price advantage. The magnitude of this advantage has had several unintended and undesirable consequences. While major oil companies, as a

group, pay much of the price for this exemption, they alone are not affected. Many small refiners have suffered competitive injury as a result of this exemption. Small refiners which are sellers of entitlements have seen their entitlements benefits reduced as a result of this exemption. In addition, small refiners which purchase entitlements but which receive no benefits from the exemption—for example, those refiners with a capacity of 100,000 to 175,000 barrels per day—have had their obligations increased as a result of the small refiner exemption. Thus, many small refiners are directly disadvantaged by this exemption by an amount of approximately \$4.7 million per year. In addition, small refiners are placed at a severe competitive disadvantage if they compete in the same market area with a small refiner which is a beneficiary of this exemption. The consequences of this competitive disadvantage may spell economic death for the small refiners. This would be a most undesirable, anticompetitive consequence.

Another unintended consequence of this exemption has been its impact upon small marketers—individual branded retailers and jobbers—who are not supplied by refiners which benefit from the exemption but who must compete in the marketplace with retail outlets supplied by, and in many cases run by, salaried employees of small refiners which benefit from the exemption. Thus, the very smallest members of this industry, the retailer and the jobber, are often faced with pump prices for gasoline supplied by small refiners which benefit from the exemption, which are less than the branded dealers' wholesale cost. Competition in this situation is impossible.

What does FEA propose?

FEA proposes to remove the selective and ill-focused benefits of this exemption and replace the exemption with an increase in the small refiner bias. This modification will distribute benefits across the board to small refiners which sell entitlements, as well as to those which have purchase obligations. The modification will result in a flow of benefits to small refiners, as a class, from major oil companies in the amount of \$40.3 million per month. The present exemption benefits only 56 small refiners, while disadvantaging nearly an equal number of small refiners. The proposed FEA modification will benefit 112 small refiners, twice as many as the current exemption. The dollar amount of this flow is also targeted to yield the greatest benefits to the smallest refiners. The combined effect of the redistribution of these benefits and the reduction in the total amount of the benefits is to avoid the market consequences of the present exemption. The proposed modification by FEA will avoid unfair market consequences and unintended suffering by retailers and jobbers who cannot defend themselves against subsidized competition by a small refiner through salaried employee-operated retail outlets. Let us not forget that by comparison to Exxon, Texaco, Mobil or Gulf, small refiners are indeed small. However, by comparison

to a single Exxon dealer or Texaco jobber, these small refiners are very large.

A balance must be struck which flows benefits to small refiners, both entitlement purchasers and sellers, in order to promote competition. But that balance must assure that small retailers and jobbers are not destroyed.

What must the House do?

If the House does not disapprove this proposal, energy action No. 2, it will become effective automatically. Therefore, I urge you to vote "no" on the resolution of disapproval.

The SPEAKER. All time has expired.

The question is on the motion to discharge offered by the gentleman from Texas (Mr. ECKHARDT).

The question was taken; and on a division (demanded by Mr. ECKHARDT) there were—ayes 15, noes 34.

So the motion to discharge was rejected.

GENERAL LEAVE

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the motion just concluded on House Resolution 1205, and also on the bill (H.R. 12169) which was considered earlier today.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. ROUSSELOT asked and was given permission to address the House for 1 minute.)

Mr. ROUSSELOT. Mr. Speaker, I have asked for this time for the purpose of asking the distinguished majority leader, the gentleman from Massachusetts (Mr. O'NEILL) if he will give us the program for the rest of the week, if any, and the schedule for next week.

Mr. O'NEILL. Mr. Speaker, will the distinguished acting minority leader yield?

Mr. ROUSSELOT. I am delighted to yield to the distinguished majority leader.

Mr. O'NEILL. Mr. Speaker, there is no further legislative business for today. The program for the House of Representatives for next week is as follows:

Monday is a holiday, the Memorial Day recess.

On Tuesday, we will have the call of the Private Calendar.

This will be followed by consideration of H.R. 12169, the Federal Energy Administration bill, votes on amendments and final passage.

This will be followed by H.R. 13655, automotive research and development, under an open rule, with 1 hour of debate.

This will be followed by H.R. 10930, cotton research, under an open rule, with 1 hour of debate.

On Wednesday we will have a joint meeting to receive King Juan Carlos of Spain.

This will be followed by consideration

of H.R. 13680, international security assistance, with votes on amendments and the bill.

We will then take up H.R. 9560, water pollution control, under an open rule, with 2 hours of debate, general debate only.

On Thursday and Friday Members will meet on the House floor at 10 a.m. for the Magna Carta ceremony in the rotunda.

We will then consider the following bills:

H.R. 9560, water pollution control, with votes on amendments and the bill.

H.R. 13179, State Department authorization, under an open rule, with 1 hour of debate.

H.R. 13589, USIA authorization, under an open rule, with 1 hour of debate.

H.R. 6218, Outer Continental Shelf management, under an open rule, with 2 hours of debate.

Conference reports may be brought up at any time, and any further program will be announced later.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. O'NEILL. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday of next week.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. ROUSSELOT. Mr. Speaker, I would further like to ask the distinguished majority leader, the gentleman from Massachusetts (Mr. O'NEILL), is it contemplated that on next Friday we will be out by say 5 o'clock?

Mr. O'NEILL. If the distinguished gentleman from California will yield further, I will state that there will definitely be a Friday session, as the gentleman knows.

Mr. ROUSSELOT. I understand that.

Mr. O'NEILL. And we anticipate that the House business will be completed prior to 5 o'clock.

Mr. ROUSSELOT. May I further inquire of the distinguished majority leader, if the bill (H.R. 12169), the Federal Energy Administration amendments, happens to take all day Tuesday, would that mean that some of these other matters will be dropped later on?

Mr. O'NEILL. If the gentleman will yield further, we will try to work those bills in during the week.

Mr. BAUMAN. Mr. Speaker, will the gentleman from California yield?

Mr. ROUSSELOT. I yield to the gentleman from Maryland.

Mr. BAUMAN. Mr. Speaker, I just wanted to comment to the distinguished majority leader, that during the gentleman's absence the first 2 days of this week the gentleman from Maryland did, as I said I would, miss the distinguished majority leader. We are sorry the distinguished gentleman was not with us; but the gentleman from Maryland only asked for one quorum and one rollcall

during the entire time and was compelled to do so by conscience. The gentleman from Maryland wants to assure the distinguished majority leader that he did not attempt to do anything to disturb the excellent record of attendance of the majority leader. We are all pleased to see the gentleman here today and I hope he enjoyed a fine trip.

Mr. O'NEILL. As a matter of fact, I did call once from London, and my query was, "How was Bauman behaving?"

Mr. BAUMAN. I would say to the gentleman that it was not BAUMAN's behavior that was in question this week, as the gentleman, I am sure knows.

Mr. WAGGONER. Mr. Speaker, will the gentleman yield?

Mr. ROUSSELOT. I yield to the gentleman from Louisiana.

Mr. WAGGONER. Mr. Speaker, I have enjoyed this colloquy very much. I would just say to my friend from Maryland—and he is my friend—that I hope the pattern he set in the last week can and will be continued.

A TRIBUTE TO THE LATE JUSTICE RANDOLPH A. WEATHERBEE

(Mr. COHEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COHEN. Mr. Speaker, commencement season is upon us and the spring rite of casting high-minded invocations from elevated platforms to those who hold the future in their heads and hands has begun. It is a joyous time. The cumulus clouds of despair and cynicism that fill the skies during most of the year are swept away by the fresh breeze of young, eager, and optimistic men and women. It is a time of renewal and rebirth.

Last weekend the joy emanating from the college campuses in my State was dampened with the news of the unexpected death of one of the most admired and respected men in Maine, Supreme Court Justice Randolph A. Weatherbee. It was a sad reminder of how thin the tissue is that separates us from our mortality.

Encomiums are almost always inadequate. The attempt to capture and confine in words the robust spirit of "Rand" Weatherbee is clearly futile. The tongue falters and words strain under the great weight of an impossible task. But the occasion, nonetheless, demands the effort.

Justice Weatherbee was a man of uncommon courage and diversity. He overcame polio at an early age to become an amateur boxer, a fierce tennis player and accomplished skier. He was a Phi Beta Kappa scholar at Bates College and a graduate of Cornell University Law School. He served as a member of the Maine State Legislature, a county attorney for Penobscot County, judge of probate, a justice of the Maine Superior Court and the Maine Supreme Judicial Court.

He loved the rustic woods of Maine and became an evangelical protector of its wildlife—woe be unto that poacher

who was brought before "the Judge" for he would see the customary judicial gentleness turn a metallic blue of moral outrage.

He would drive 150 miles to find a pond or lake where he could cast a fishing line and return home in the dark to write a scholarly judicial opinion that would be laced with wit and wisdom.

Words cannot tell what it was like to stand in the presence of a man who knew all of the great inequities in life, the huge injustices, the intolerable wrongs, the questions unanswered, the truths untold—and yet maintained the will to stand tall and unafraid, humorous and humble, dutiful and decent. Rand Weatherbee was a walking celebration of life.

One of the most vivid remembrances I have of Justice Weatherbee was the occasion when he spoke to a local bar association meeting a few years ago. That night, laden with antique muskets and Kentucky rifles, he permitted us to look deep into his hobby and abiding sense of history—the role of the gun in the making of war and the keeping of peace.

We discovered that a knight's armour at one time was deemed as impenetrable as the Sherman tank until man devised the crossbow. But then in 1139 A.D. the Catholic Church outlawed the bow as being hateful to God. Francis Bacon, while trying to make love and not war, produced an explosive instead of an aphrodisiac and therefore was only sardonically successful in his experiment. In 1350, man unlocked the Guernican box of horror and began to manufacture guns. The use of the gun produced philosophic polarization over the centuries. Cervantes claimed the gun was base and cowardly, the invention of Satan. For Carlyle, gunpowder made all men tall alike.

On the not quite so quiet frontier, others were concerned with more mundane problems of the lack of accuracy and alacrity of the "equalizers." De Soto's companions concluded that no gun could aim at the Indians because they would not stand still—whereas, it was said, "The Indian seldom misseeth what he shooteth at." Colonel Prescott's exhortation to his men at Bunker Hill not to shoot until they could see the "whites of their eyes" was no simple badge of courage but a sad testament to the limited range of the rifle.

A demonstration of the painfully cumbersome process of loading a flintlock with a powderhorn and ramrod just to fire off a single round gave insight into the popular refrain "We fired our guns but the British kept a comin'." Phrases such as "lock, stock and barrel," "flash in the pan," and "half-cocked" suddenly came into focus against the backdrop of their original context. The production of the Kentucky and Colt rifles, the Siege of Boston, Winchester's acquisition of the insolvent enterprise of Christopher Spencer's repeating rifle, the gift of 5,000 Winchesters to the Indians to kill buffalo and their reemergence at the Little Big Horn—critical historical events narratively released from the unturned pages of textbooks.

It was a revivifying experience listening to a craftsman rub and polish the gunstock of a very private pastime with the handcloth of a deep and delicate passion.

Mr. Speaker, a heart has broken, new babes are born, a tree falls in the distant forest, the great world spins on.

Death has placed his hand upon this son of Maine's shoulder and the void that has been created is not likely to be filled.

To his lovely wife Barbara, to his children, Peter and Jane, to his entire family and friends, I can only say that the pain of losing the presence of Rand Weatherbee can never erase the joy of having known and loved him.

ORPHANS OF THE EXODUS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. BURKE) is recognized for 5 minutes.

Mr. BURKE of Florida. Mr. Speaker, all of the nations which signed the Helsinki Final Act, including the Soviet Union, pledged to do everything possible to reunite families separated by political boundaries.

Because the Soviet Union is not living up to that promise, Members of Congress are conducting a vigil on behalf of the families which remain separated.

A case history of these families entitled "Orphans of the Exodus" dramatically details this tragic problem. At this time I would like to bring to the Members' attention the situation of the Ulanovsky family.

Lev Ulanovsky has been alone since 1973 when his father and brother were allowed to emigrate to Israel. Lev applied for permission to join them in Israel in September 1974 but he has been turned down for "state security reasons."

He has written that this cannot be the real reason because he has never had access to any secret information. Although he has a degree in astrophysics his thesis was published openly in the Journal of Astronomics and in his own words:

It is obvious that such questions as extragalactic astrophysics cannot have any secret connotations.

He also took a mandatory course in military training at his school, but other students who took the same course have been allowed to emigrate to Israel so obviously no secrets were learned in that class.

It is clear, Mr. Speaker, that Lev Ulanovsky is being forced to remain in the Soviet Union separated from his family as part of the government's strategy to harass all persons who apply for permission to leave the country.

This is a violation of his basic human rights and the Helsinki Declaration which the Soviets so proudly signed last year.

FINANCIAL STATEMENT OF CONGRESSMAN CHARLES W. WHALEN, JR., AND FAMILY

The SPEAKER pro tempore. Under a previous order of the House, the gentle-

man from Ohio (Mr. WHALEN) is recognized for 30 minutes.

Mr. WHALEN. Mr. Speaker, as in previous years, I again am providing a complete disclosure of my family's financial affairs. The following reflects the income received by me and my family during calendar year 1975; Federal, State, and local taxes paid in 1975; and a breakdown of our assets, liabilities, and net worth as of April 30, 1976.

The increase in the respective net worth of individual family members is primarily attributable to the recent rise in stock market prices. Also contributing to the increase in asset totals are the following gifts:

1. \$12,000.00 cash gifts to me and my wife by my parents, Charles W. Whalen, Sr. and Colette E. Whalen.
2. \$12,000.00 stock gifts to me and my wife by her parents, Frank Gleason, Sr. and Norma Gleason.
3. \$6,000.00 stock gifts to each of the six Whalen children by their grandparents, Frank Gleason, Sr. and Norma Gleason.

My wife and I paid total taxes of \$31,590.92, which is 36.5 percent of our gross income of \$86,432.62, which we received last year. Federal taxes alone amounted to 28 percent of our gross income.

I include the following:

1975 INCOME: MARY AND CHARLES W. WHALEN, JR.

| | Gross amounts |
|---|---------------|
| U.S. House of Representatives, Salary | \$42,850.00 |
| Net Partnership Income: Whalen Investment Company | 16,423.16 |
| Interest Received, Prudential Insurance Company | 52.43 |
| Rental Income, 228 Beverly Place, Dayton, Ohio | 1,500.00 |
| Taxable dividends received (common stock): | |
| Allegheny Power Systems, Inc. | 1,694.00 |
| American Cyanamid | 300.00 |
| Baltimore Gas & Electric | 196.00 |
| Beneficial Corporation | 235.00 |
| Coca Cola Company | 552.00 |
| Copeland Corporation | 1,080.00 |
| Delmarva Power & Light Company | 1,200.00 |
| Detroit Edison Company | 1,145.50 |
| Duke Power Company | 1,400.00 |
| Ex-Cell-O | 100.00 |
| Federated Department Stores, Inc. | 264.00 |
| General Telephone & Electronics | 540.00 |
| Gulf States Utilities Company | 448.00 |
| Hubbard Real Estate Investments | 192.00 |
| Indianapolis Power & Light Company | 1,547.00 |
| Lionel D. Eddie Capital Fund, Inc. | 2,479.00 |
| Merrill Lynch, Pierce, Fenner & Smith | 29.50 |
| Middle South Utilities | 1,764.00 |
| Minnesota Mining & Mfg. Company | 810.00 |
| Owens-Illinois, Inc. | 344.00 |
| Charles Pfizer, Inc. | 48.60 |
| Phillips Petroleum Company | 320.00 |
| Public Service Electric & Gas Company | 4,042.00 |
| Royal Dutch Petroleum Company | 612.11 |
| South Carolina Electric & Gas Company | 740.00 |
| Texas Utilities Company | 489.00 |

| | |
|--|-----------|
| Virginia Electric Power Company | 1,652.00 |
| Westinghouse | 388.80 |
| Total | 24,611.51 |
| Non-taxable return on capital (common stock): Detroit Edison Co. | (304.50) |
| Washington Post article | 75.00 |

| | |
|---------------------------------------|--------|
| Speeches (Honorarium): | |
| St. Charles Parish, Dayton, Ohio | 200.00 |
| American University, Washington, D.C. | 300.00 |
| Total | 500.00 |

| | |
|---|-----------|
| Capital gains: | |
| Sale of Stock Rights, Public Service & Electric | 415.00 |
| Hubbard Real Estate Investment | 5.52 |
| Capital Losses | none |
| Taxable Personal Income | 86,432.62 |
| Taxes paid to IRS, 1975 | 24,577.04 |

| | |
|--|------------|
| 1975 CLAIMED DEDUCTIONS | |
| 1. Standard exemptions, six children | |
| 2. Public Law, 82d Congress, Public Law 178, 83d Congress, away from home living expense allowance | \$3,000.00 |
| 3. Standard deduction for stock dividends | 200.00 |
| 4. Interest paid on loans: | |
| Third National Bank | 498.35 |
| Charles W. Whalen, Sr. | 925.00 |
| Mutual Benefit Life | 340.05 |
| Total | 1,763.40 |

| | |
|--|----------|
| 5. Taxes paid (other than Federal): | |
| City of Oakwood, personal income tax | 791.78 |
| Montgomery County, intangibles tax | 916.79 |
| State of Ohio, personal income tax | 1,316.86 |
| Montgomery County, Maryland property tax | 2,245.25 |
| Montgomery County, Ohio property tax | 1,628.78 |
| General sales tax | 520.60 |
| State and local gasoline tax | 102.00 |
| Government of Netherlands, Royal Dutch Petroleum Co. | 91.82 |
| Total | 7,013.88 |

| | |
|--|----------|
| 6. Depreciation, 228 Beverly Place | 600.00 |
| 7. Allowable medical deductions (family) | 150.00 |
| 8. Office and professional expense | 695.21 |
| 9. Charitable donations | 1,275.00 |
| 10. Government travel for which not reimbursed | 840.54 |

1975 INCOME—WHALEN CHILDREN

| | |
|--|----------|
| CHARLES EDWARD WHALEN | |
| Taxable dividends received (common stock): | |
| Allegheny Power System, Inc. | \$770.00 |
| Atlantic City Electric Co. | 604.00 |
| Baltimore Gas and Electric Co. | 196.00 |
| Carolina Power and Light Co. | 1,097.60 |
| Consolidated Edison Co. | 120.00 |
| Copeland Corp. | 540.00 |
| Duke Power Co. | 700.00 |
| Lionel Eddie Capital Fund, Inc. | 181.56 |
| Entex, Inc. | 528.00 |
| Florida Power and Light Co. | 600.10 |
| Illinois Power Co. | 660.00 |
| Indianapolis Power and Light Co. | 182.00 |

| | |
|-----------------------------------|--------|
| Middle South Utilities | 756.00 |
| Pfizer, Inc. | 113.40 |
| Public Service Electric & Gas Co. | 516.00 |
| Third National Bank & Trust Co. | 213.00 |
| Virginia Electric Power Co. | 236.00 |

| | |
|--|----------|
| Total | 8,173.66 |
| Non-taxable return on capital (common stock): Carolina Power & Light Co. | (22.40) |
| Interest received: Riggs National Bank | 54.42 |
| Capital gains: Sale of stock rights, Public Service Electric & Gas | 26.50 |
| Capital losses | None |

| | |
|-------------------------|----------|
| Taxable personal income | 8,054.58 |
| Taxes paid to IRS, 1975 | 1,312.34 |

| | |
|--|--------|
| 1975 CLAIMED DEDUCTIONS | |
| Taxes paid (other than Federal): | |
| State of Ohio, income tax | 11.81 |
| Montgomery County, Ohio, intangibles tax | 395.75 |
| Total | 407.56 |

| | |
|------------------|-------|
| Accountants' fee | 30.00 |
|------------------|-------|

DANIEL DENNIS WHALEN

| | |
|--|----------|
| Taxable dividends received (common stock): | |
| Allegheny Power System, Inc. | \$770.00 |
| Atlantic City Electric Company | 604.00 |
| Baltimore Gas and Electric Co. | 196.00 |
| Carolina Power and Light Co. | 1,097.60 |
| Consolidated Edison Company | 180.00 |
| Copeland Corporation | 540.00 |
| Duke Power Company | 700.00 |
| Lionel Eddie Capital Fund, Inc. | 205.02 |
| Entex, Inc. | 264.00 |
| Florida Power and Light Company | 803.60 |
| Illinois Power Company | 660.00 |
| Indianapolis Power and Light Co. | 182.00 |
| Middle South Utilities | 756.00 |
| Pfizer, Inc. | 113.40 |
| Public Service Electric & Gas Co. | 516.00 |
| Third National Bank & Trust Company | 210.00 |
| Virginia Electric Power Co. | 236.00 |

| | |
|--|----------|
| Total | 8,033.62 |
| Non-taxable return on capital (common stock): Carolina Power & Light Co. | (22.40) |
| Interest received: Riggs National Bank | 12.32 |
| Capital gains: Sale of stock rights, Public Service Electric & Gas | 26.50 |
| Capital losses | none |

| | |
|-------------------------|----------|
| Taxable personal income | 8,072.44 |
| Taxes paid to IRS, 1975 | 1,294.29 |

| | |
|--|--------|
| 1975 CLAIMED DEDUCTIONS | |
| Taxes paid (other than Federal): | |
| State of Ohio, income tax | 12.05 |
| Montgomery County, Ohio, intangibles tax | 391.80 |
| Total | 403.86 |

| | |
|------------------|-------|
| Accountants' fee | 30.00 |
|------------------|-------|

EDWARD JAMES WHALEN

| | |
|--|----------|
| Taxable dividends received (common stock): | |
| Allegheny Power System, Inc. | \$770.00 |
| Atlantic City Electric Co. | 604.00 |
| Baltimore Gas and Electric Co. | 196.00 |
| Carolina Power and Light Co. | 1,097.60 |
| Consolidated Edison Co. | 120.00 |
| Copeland Corporation | 540.00 |
| Duke Power Company | 700.00 |
| Lionel Eddie Capital Fund, Inc. | 211.14 |

1975 INCOME—WHALEN CHILDREN—CON.

EDWARD JAMES WHALEN—CON.

Taxable dividends received—CON.

| | |
|-----------------------------------|--------|
| Entex, Inc. | 132.00 |
| Florida Power and Light Co. | 774.90 |
| Illinois Power Company | 660.00 |
| Indianapolis Power and Light Co. | 182.00 |
| Middle South Utilities | 756.00 |
| Pfizer, Inc. | 113.40 |
| Public Service Electric & Gas Co. | 516.00 |
| Third National Bank & Trust Co. | 210.00 |
| Virginia Electric Power Co. | 236.00 |

Total 7,819.04

Nontaxable return on capital (common stock): Carolina Power and Light Co.

(22.40)

Interest received: Riggs National Bank

12.86

Capital gains: Sale of stock rights, Public Service Electric & Gas

26.50

Capital losses

none

Taxable personal income 7,858.40

Taxes paid to IRS, 1975 1,245.39

1975 CLAIMED DEDUCTIONS

Taxes paid (other than Federal): State of Ohio, income tax

12.06

Montgomery County, Ohio, intangibles tax

381.10

Total 393.16

Accountants' fee 30.00

JOSEPH MICHAEL WHALEN

Taxable dividends received (common stock):

| | |
|-----------------------------------|----------|
| Allegheny Power System, Inc. | \$770.00 |
| Atlantic City Electric Company | 604.00 |
| Baltimore Gas & Electric Co. | 196.00 |
| Carolina Power and Light Co. | 1,097.60 |
| Consolidated Edison Company | 120.00 |
| Copeland Corporation | 540.00 |
| Duke Power Company | 700.00 |
| Lionel Edie Capital Fund, Inc. | 201.45 |
| Entex, Inc. | 132.00 |
| Florida Power and Light Co. | 602.70 |
| Illinois Power Company | 660.00 |
| Indianapolis Power and Light Co. | 182.00 |
| Middle South Utilities | 756.00 |
| Pfizer, Inc. | 113.40 |
| Public Service Electric & Gas Co. | 516.00 |
| Third National Bank & Trust Co. | 210.00 |
| Virginia Electric Power Co. | 236.00 |

Total 7,637.15

Nontaxable return on capital (common stock): Carolina Power and Light Co.

(22.40)

Interest received: Riggs National Bank

20.59

Capital gains: Sale of stock rights, Public Service Electric and Gas

none

Capital losses

none

Taxable personal income 7,684.24

Taxes paid to IRS, 1975 1,205.08

1975 CLAIMED DEDUCTIONS

Taxes paid (other than Federal): State of Ohio, income tax

11.81

Montgomery County, Ohio, intangibles tax

372.40

Total 384.21

Accountants' fee 30.00

ANNE ELIZABETH WHALEN

Taxable dividends received (common stock):

| | |
|--------------------------------|----------|
| Allegheny Power System, Inc. | \$354.20 |
| Atlantic City Electric Company | — |
| Baltimore Gas and Electric | 196.00 |
| Carolina Power and Light Co. | 1,097.60 |
| Consolidated Edison Co. | 90.00 |

Copeland Corporation 540.00

Duke Power Company 420.00

Lionel Edie Capital Fund, Inc. 213.18

Entex, Inc. —

Florida Power and Light Co. 631.40

Illinois Power Company 660.00

Indianapolis Power and Light Co. 91.00

Middle South Utilities 756.00

Pfizer, Inc. 113.40

Public Service Electric & Gas Co. 516.00

Third National Bank & Trust Co. 210.00

Virginia Electric Power Co. 236.00

Total 6,124.78

Nontaxable return on capital (common stock): Carolina Power and Light Co.

(22.40)

Interest received: Riggs National Bank

15.96

Capital gains: Sale of stock rights, Public Service Electric & Gas

26.50

Capital losses

none

Taxable personal income 6,167.24

Taxes paid to IRS, 1975 881.58

1975 CLAIMED DEDUCTIONS

Taxes paid (other than Federal): State of Ohio, income tax

8.81

Montgomery County, Ohio, intangibles tax

296.55

Total 305.36

Accountants' fee 30.00

MARY BARBARA WHALEN

Taxable dividends received (common stock):

| | |
|------------------------------|----------|
| Carolina Power and Light Co. | \$160.00 |
| Copeland Corp. | 300.00 |
| Lionel D. Edie Capital Fund | 178.50 |
| Indianapolis Power & Light | 546.00 |
| Middle South Utilities | 756.00 |
| Pfizer, Inc. | 113.40 |
| Virginia Electric Power Co. | 236.00 |

Total 2,289.90

Nontaxable return on capital (common stock): Carolina Power and Light Co.

(3.20)

Interest received: Riggs National Bank

11.60

Capital gains

none

Capital losses

none

Taxable personal income 2,298.30

Taxes paid to IRS, 1975 161.72

1975 CLAIMED DEDUCTIONS

Taxes paid (other than Federal): State of Ohio, income tax

none

Montgomery County, Ohio, intangibles tax

109.90

Accountants' fee 30.00

FINANCIAL STATEMENT, APRIL 30, 1976:

MARY BARBARA AND CHARLES W. WHALEN, JR.

ASSETS

| | |
|--|------------|
| Cash, checking account | \$4,755.62 |
| Lionel D. Edie ready assets trust | 6,054.82 |
| Common stock: | |
| Allegheny Power Systems (1,100 shares) | 19,525.00 |
| American Cyanamid (200 shares) | 5,050.00 |
| Baltimore Gas & Electric Co. (100 shares) | 2,400.00 |
| Beneficial Finance Co. (188 shares) | 3,876.00 |
| Coca-Cola (240 shares) | 20,160.00 |
| Copeland Corp. (2,800 shares) | 44,800.00 |
| Delmarva Power & Light Co. (1,000 shares) | 12,620.00 |
| Detroit Edison Co. (1,000 shares) | 1,145.50 |
| Duke Power Co. (1,000 shares) | 1,400.00 |
| Lionel D. Edie Capital Fund, Inc. (4,861 shares) | 87,499.39 |

Ex-Cell-O Corp. (100 shares) 1,987.00

Federated Department Stores (220 shares) 11,275.00

General Telephone (300 shares) 7,950.00

Gulf State Utilities (400 shares) 5,200.00

Hubbard Real Estate Invest. Co. (120 shares) 1,620.00

Indianapolis Power & Light Co. (850 shares) 18,164.50

Merrill, Lynch, Pierce, Fenner, and Smith (50 shares) 1,318.50

Middle South Utilities, Inc. (1,400 shares) 20,818.00

Minnesota Mining and Manufacturing (600 shares) 37,422.00

Owens-Illinois Glass (200 shares) 12,250.00

Charles Pfizer, Inc. (60 shares) 1,710.00

Phillips Petroleum (200 shares) 11,550.00

Public Service Electric & Gas (2,350 shares) 44,062.50

Royal Dutch Petroleum (188 shares) 8,883.00

South Carolina Electric Gas (500 shares) 8,750.00

Steadman Fund (123½ shares) 312.45

Texas Utilities (400 shares) 7,400.00

Virginia Electric Power Co. (1,400 shares) 29,218.00

Westinghouse Electric Corp. (400 shares) 6,400.00

Unity State Bank (2 shares) 50.00

Total 445,280.49

Cash value, paid up life insurance

73,084.04

Cash value, outstanding life insurance

27,771.36

Contribution to public employees retirement system of Ohio

5,008.23

Contribution to Teachers Insurance and Annuity Association

13,076.39

Contribution to civil service retirement deposit

28,852.75

Partnership interest, Whalen Investment Co.

112,500.00

Residence, 228 Beverly Place, Dayton, Ohio

35,000.00

Furniture, 228 Beverly Place, Dayton, Ohio

1,000.00

Residence, 5301 Portsmouth Rd., Bethesda, Md.

140,000.00

Furniture, 5301 Portsmouth Rd., Bethesda, Md.

25,000.00

Jewelry (1969 valuation)

26,000.00

1971 Ford Country Squire station wagon

1,250.00

1965 Ford Mustang

300.00

Total assets 945,280.49

LIABILITIES

Loan—Third National Bank & Trust Co.

10,000.00

Total liabilities 10,000.00

Net worth 935,280.49

FINANCIAL STATEMENT, APRIL 30, 1976:

CHARLES EDWARD WHALEN

ASSETS

| | |
|---|----------|
| Cash, checking account | \$875.24 |
| Cash, savings account | 1,098.46 |
| Common stock: | |
| Allegheny Power System, Inc. (500 shares) | 8,875.00 |
| Atlantic City Electric Co. (400 shares) | 7,400.00 |
| Baltimore Gas and Electric Co. (100 shares) | 2,400.00 |
| Central Illinois Light (100 shares) | 1,687.00 |

| | |
|---|-------------------|
| Carolina Power and Light Company (700 shares)----- | 13,909.00 |
| Consolidated Edison (100 shares)----- | 1,737.00 |
| Copeland Corporation (1,400 shares)----- | 22,400.00 |
| Delmarva Power & Light Co. (100 shares)----- | 1,262.00 |
| Duke Power (500 shares)----- | 9,375.00 |
| Entex, Inc. (480 shares)----- | 13,080.00 |
| Lionel Edie Capital Fund (356 shares)----- | 6,404.44 |
| Florida Power & Light Co. (460 shares)----- | 11,730.00 |
| Illinois Power Co. (300 shares)----- | 7,575.00 |
| Indianapolis Power & Light Co. (100 shares)----- | 2,137.00 |
| Kansas City Power & Light (100 shares)----- | 2,675.00 |
| Middle South Utilities (700 shares)----- | 10,409.00 |
| Pfizer, Inc. (140 shares)----- | 3,955.00 |
| Pacific Gas & Electric (100 shares)----- | 2,062.00 |
| Public Service Electric & Gas Co. (300 shares)----- | 5,625.00 |
| Third National Bank & Trust Co. (224 shares)----- | 3,360.00 |
| Virginia Electric Power Co. (300 shares)----- | 6,261.00 |
| Total ----- | 144,818.44 |
| Net worth ----- | 146,292.14 |
| LIABILITIES | |
| Total liabilities ----- | none |
| Net worth ----- | 146,292.14 |

FINANCIAL STATEMENT, APRIL 30, 1976:

DANIEL DENNIS WHALEN

ASSETS

| | |
|---|-------------------|
| Cash, checking account----- | \$675.67 |
| Cash, savings account----- | 227.16 |
| Common stock: | |
| Allegheny Power System, Inc. (500 shares)----- | 8,875.00 |
| Atlantic City Electric Co. (400 shares)----- | 7,400.00 |
| Baltimore Gas and Electric Co. (100 shares)----- | 2,400.00 |
| Central Illinois Light (100 shares)----- | 1,687.00 |
| Carolina Power and Light Co. (700 shares)----- | 13,909.00 |
| Central Southwest Corp. (100 shares)----- | 1,687.00 |
| Consolidated Edison (150 shares)----- | 2,605.50 |
| Copeland Corp. (1,400 shares)----- | 22,400.00 |
| Duke Power (500 shares)----- | 9,375.00 |
| Entex, Inc. (240 shares)----- | 7,540.00 |
| Lionel Edie Capital Fund (402 shares)----- | 7,231.98 |
| Florida Power & Light Co. (560 shares)----- | 14,280.00 |
| Illinois Power Co. (300 shares)----- | 7,575.00 |
| Indianapolis Power & Light Co. (100 shares)----- | 2,137.00 |
| Middle South Utilities (700 shares)----- | 10,409.00 |
| Pfizer, Inc. (140 shares)----- | 3,955.00 |
| Pacific Gas & Electric (100 shares)----- | 2,062.00 |
| Public Service Electric & Gas (100 shares)----- | 5,625.00 |
| South Carolina Electric & Gas Co. (100 shares)----- | 1,750.00 |
| Third National Bank & Trust Co. (221 shares)----- | 3,315.00 |
| Virginia Electric Power Co. (200 shares)----- | 4,174.00 |
| Total ----- | 140,392.48 |
| Net worth ----- | 141,295.31 |
| LIABILITIES | |
| Total liabilities ----- | none |
| Net worth ----- | 141,295.31 |

FINANCIAL STATEMENT, APRIL 30, 1976:

EDWARD JAMES WHALEN

ASSETS

| | |
|--|-------------------|
| Cash, checking account----- | \$514.61 |
| Cash, savings account----- | 224.43 |
| Common stock: | |
| Allegheny Power System, Inc. (500 shares)----- | 8,875.00 |
| Atlantic City Electric Co. (400 shares)----- | 7,400.00 |
| Baltimore Gas and Electric Co. (100 shares)----- | 2,400.00 |
| Central Illinois Light (100 shares)----- | 1,687.00 |
| Carolina Power and Light Co. (700 shares)----- | 13,909.00 |
| Central Southwest Corp. (100 shares)----- | 1,687.00 |
| Consolidated Edison (100 shares)----- | 1,737.00 |
| Copeland Corp. (1,400 shares)----- | 22,400.00 |
| Delmarva Power and Light (100 shares)----- | 1,262.00 |
| Duke Power Co. (500 shares)----- | 9,375.00 |
| Entex, Inc. (120 shares)----- | 3,270.00 |
| Lionel Edie Capital Fund (414 shares)----- | 7,447.00 |
| Florida Power and Light Co. (540 shares)----- | 13,770.00 |
| Illinois Power Co. (300 shares)----- | 7,575.00 |
| Indianapolis Power and Light Co. (100 shares)----- | 2,137.00 |
| Middle South Utilities (700 shares)----- | 10,409.00 |
| Pfizer, Inc. (140 shares)----- | 3,955.00 |
| Pacific Gas and Electric Co. (100 shares)----- | 2,062.00 |
| Public Service Electric and Gas (300 shares)----- | 5,625.00 |
| Third National Bank & Trust Co. (221 shares)----- | 3,315.00 |
| Virginia Electric Power Co. (200 shares)----- | 4,174.00 |
| Total ----- | 134,471.00 |
| Net worth ----- | 135,210.04 |
| LIABILITIES | |
| Total liabilities ----- | none |
| Net worth ----- | 135,210.04 |

FINANCIAL STATEMENT, APRIL 30, 1976: JOSEPH

MICHAEL WHALEN

ASSETS

| | |
|---|------------|
| Cash, checking account----- | \$1,015.27 |
| Cash, savings account----- | 340.07 |
| Common stock: | |
| Allegheny Power Systems, Inc. (500 shares)----- | 8,875.00 |
| Atlantic City Electric Co. (400 shares)----- | 7,400.00 |
| Baltimore Gas and Electric Co. (100 shares)----- | 2,400.00 |
| Central Illinois Light (100 shares)----- | 1,687.00 |
| Carolina Power & Light Co. (700 shares)----- | 13,909.00 |
| Consolidated Edison (100 shares)----- | 1,737.00 |
| Copeland Corp. (1,400 shares)----- | 22,400.00 |
| Duke Power Co. (500 shares)----- | 9,375.00 |
| Lionel Edie Capital Fund (395 shares)----- | 7,477.00 |
| Florida Power and Light Co. (420 shares)----- | 10,710.00 |
| Illinois Power Co. (300 shares)----- | 7,575.00 |
| Indianapolis Power and Light Co. (100 shares)----- | 2,137.00 |
| Kansas City Power and Light (100 shares)----- | 2,675.00 |
| Middle South Utilities (700 shares)----- | 10,409.00 |
| Pfizer, Inc. (140 shares)----- | 3,955.00 |
| Pacific Gas and Electric (100 shares)----- | 2,062.00 |
| Public Service Electric & Gas Co. (300 shares)----- | 5,625.00 |

| | |
|---|-------------------|
| Third National Bank & Trust Co. (221 shares)----- | 3,315.00 |
| Virginia Electric Power Co. (300 shares)----- | 6,261.00 |
| Entex, Inc. (120 shares)----- | 3,270.00 |
| Total ----- | 133,224.00 |
| Net worth ----- | 134,579.34 |

LIABILITIES

| | |
|--------------------------------|-------------------|
| Total liabilities ----- | none |
| Net worth ----- | 134,579.34 |

FINANCIAL STATEMENT, APRIL 30, 1976:

ANNE ELIZABETH WHALEN

ASSETS

| | |
|---|-------------------|
| Cash, checking account----- | \$296.55 |
| Cash, savings account----- | 373.79 |
| Common stock: | |
| Allegheny Power System, Inc. (230 shares)----- | 5,680.00 |
| Baltimore Gas and Electric Co. (100 shares)----- | 2,400.00 |
| Central Illinois Power (100 shares)----- | 1,687.00 |
| Carolina Power and Light Co. (700 shares)----- | 13,909.00 |
| Consolidated Edison (75 shares)----- | 1,302.75 |
| Copeland Corp. (1,400 shares)----- | 22,400.00 |
| Delmarva Power and Light Co. (100 shares)----- | 1,262.00 |
| Duke Power (300 shares)----- | 5,625.00 |
| Lionel Edie Capital Fund (418 shares)----- | 7,519.00 |
| Florida Power and Light (440 shares)----- | 11,200.00 |
| Illinois Power (300 shares)----- | 7,575.00 |
| Indianapolis Power and Light Co. (50 shares)----- | 1,068.50 |
| Middle South Utilities (700 shares)----- | 10,409.00 |
| Pfizer, Inc. (140 shares)----- | 3,955.00 |
| Public Service Electric and Gas Co. (300 shares)----- | 5,625.00 |
| South Carolina Electric and Gas Co. (100 shares)----- | 1,750.00 |
| Third National Bank and Trust Co. (221 shares)----- | 3,315.00 |
| Virginia Electric Power Co. (200 shares)----- | 4,174.00 |
| Total ----- | 110,876.25 |
| Net worth ----- | 111,546.59 |

LIABILITIES

| | |
|--------------------------------|-------------------|
| Total liabilities ----- | none |
| Net worth ----- | 111,546.59 |

FINANCIAL STATEMENT, APRIL 30, 1976:

MARY BARBARA WHALEN

ASSETS

| | |
|--|------------------|
| Cash, checking account----- | \$584.87 |
| Cash, savings account----- | 255.30 |
| Common stock: | |
| Central Illinois Light (100 shares)----- | 1,687.00 |
| Carolina Power and Light Co. (100 shares)----- | 1,987.00 |
| Copeland Corp. (1,000 shares)----- | 16,220.00 |
| Lionel Edie Capital Fund (350 shares)----- | 6,296.50 |
| Indianapolis Power and Light Co. (300 shares)----- | 6,411.00 |
| Middle South Utilities (600 shares)----- | 8,922.00 |
| Pfizer, Inc. (140 shares)----- | 3,955.00 |
| Virginia Electric Power Co. (200 shares)----- | 4,174.00 |
| Total ----- | 49,652.50 |
| Net worth ----- | 50,492.67 |

LIABILITIES

| | |
|--------------------------------|------------------|
| Total liabilities ----- | none |
| Net worth ----- | 50,492.67 |

USITC AWARD FOR FREDERICK SONTAG

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Louisiana (Mr. LONG) is recognized for 5 minutes.

Mr. LONG of Louisiana. Mr. Speaker, Frederick Sontag, who is well known on Capitol Hill, as distinguished political scientist, was honored on April 14, 1976, by the U.S. International Trade Commission with the Commission's Special Achievement Award. I am sure that his friends and coworkers on the Hill will be pleased to learn of his recognition by the USITC.

The chairman of the USITC, a fellow Louisianian, Will E. Leonard, last year asked Frederick Sontag to organize the 21 out-of-Washington economic effects trade hearings. Sontag carried out this assignment with special distinction, making arrangements for very productive regional hearings and other Commission activities and giving special attention to media coverage of the activities and decisions of the International Trade Commission. This was of particular importance in a year when the ITC has taken on additional responsibilities and when there was a significant increase in the amount of work for the Commission to carry out.

Frederick Sontag is an excellent example of the kind of skilled and dedicated professional whom the Federal Government is often fortunate enough to retain from a private sector or State government. There is a continuing need to attract men and women of this high caliber to our independent agencies, and I am delighted that a Capitol Hill alumnus has been honored in this way.

The citation and award remarks are as follows:

FREDERICK H. SONTAG RECEIVING FEDERAL SPECIAL ACHIEVEMENT AWARD

Frederick H. Sontag of South Orange, N.J. and Seal Harbor, Me. is receiving the Special Achievement Award of the U.S. International Trade Commission that is granted for outstanding performance of a specific major assignment.

Sontag, who is the Senior Advisor to USITC Chairman Will E. Leonard, is receiving the citation which reads:

"For distinguished special achievement in transacting arrangements on numerous occasions for the conducting of hearings and other Commission activities outside of Washington, D.C. and for demonstrated accomplishment in assuring that Commission actions and decisions receive broadest possible dissemination and accurate interpretation, all of which materially advanced the accomplishment of the Commission's mission in international trade."

The public affairs and research consultant is also being given a check award.

Sontag, a graduate of Phillips Academy, Andover and Colby College, is a member of numerous professional and civic organizations.

The USITC is the chief international economic research arm of the Congress and the Executive Department. It is an independent agency.

Sontag, who is a nationally recognized lecturer, is the co-author of "Parties: The Real Opportunity for Effective Citizen Politics" (Alfred A. Knopf, hardback; Vintage-Random House, softcover).

Chairman Leonard said:

"In a year when the U.S. International Trade Commission has taken on additional

responsibilities and a corresponding increase in workload, my co-worker more than met the challenge. Excellence in any capacity is worthy of recognition and the Commissioners feel that this past year in particular represents a significant period in the history of our agency—a period that marked the beginning of expanded activities, importance, and service to this nation. To be honored at such a time commands special respect and admiration by all of us and represents a degree of achievement to which all of us might aspire.

"The Commissioners join in extending their personal congratulations and very sincere appreciation to you as you are being honored today, knowing that it is such individuals as yourself that make us proud of the U.S. International Trade Commission and its accomplishments."

In receiving the award, Sontag was told: "This award is in recognition of work performed outside of a regular assignment for performance above and beyond the call of duty. With this award the six Commissioners express their thanks and appreciation to an individual member of the staff for that extra measure of interest and service. One receiving recognition is to be congratulated, for such performance is the substance on which exemplary records of public service are built."

ROBERT L. REBEIN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from West Virginia (Mr. STAGGERS) is recognized for 5 minutes.

Mr. STAGGERS. Mr. Speaker, 7 years ago I had the privilege of hiring Robert L. Rebein as a staff attorney on our Investigations Subcommittee. He had previously served in various high level capacities with the Federal Bureau of Investigation, and I was delighted to have a man of his extraordinary background and talents on the subcommittee. My expectations, and those of our membership, were not misplaced. During his 2½ years with us, the subcommittee's oversight efforts flourished, and its probes of regulatory agency activity—particularly of the Interstate Commerce Commission—were among the most effective and far reaching that had yet been conducted. Robert Rebein's investigative insights; his creative and energetic approach to even the most mundane, but essential details; the scholarly way in which he applies himself and above all his exceptional objectivity made him a trusted professional aide and his workmanship respected by friend and adversary alike.

Unfortunately for the committee, Robert Rebein's special capabilities were obvious to many, and his days as one of our staff attorneys numbered. In June of 1971 he left us to become Assistant Managing Director of the Interstate Commerce Commission. This was an agency he had helped to reform from the outside, and now he was to be given the opportunity to effect changes from within. It was a considerable challenge and, needless to say, a very difficult assignment. But, as in the past, the mettle of Robert Rebein was more than equal to the tasks at hand. Before too many months had passed, he was promoted to Managing Director—the Commission's top administrative post. Thanks, in large measure to his leadership in that role,

this old line agency has become one of the most innovative and progressive regulatory arms in Government. From computer technology and program management to personnel morale and fiscal controls, the ICC's process has been made more effective and our taxpayers provided with a more responsive, efficient forum to address their surface transportation problems. As a result of Robert Rebein's persistence and foresight, administrative actions were planned, initiated, and fully implemented to help the Commission eliminate red tape and waste and bring about greater cost savings and productivity in all areas of its operations. No function of the organization escaped his quality stamp, and his achievements are now indelibly etched in the greatly enhanced performance record of this critically important regulatory arm.

During this period, the Commission's relationship with our committee also reflected the new look Robert Rebein was fashioning. Few times have produced so much teamwork and so many mutual exchanges between an independent agency and the Congress. This special climate of cooperation has been a major factor in the development of a vastly improved regulatory process and a national transportation program geared to growth, flexibility, and need.

Once again, however, the winds of fortune have beckoned and Robert Rebein has been called upon to accept still greater responsibilities and still larger challenges. He is leaving the Interstate Commerce Commission for an executive position with the Internal Revenue Service. Although the ICC will be losing one of its finest employees, the people of our Nation will not be losing him from their service. That to me is most important, because persons of Robert Rebein's outstanding caliber are difficult to replace, and our Government could not long operate without such experience and expertise at the helm.

The Commerce Committee is proud of Robert Rebein, as I know the Commission is, and we join them and all of his friends and colleagues in Government in wishing him well in his endeavors to come. Mr. Chairman, I insert a letter from Chairman Stafford to the Internal Revenue Service about some of Mr. Rebein's accomplishments at the Commission:

FEBRUARY 20, 1976.

Mr. RONALD E. PATTERSON,
Administrative Assistant to Executive Resources Board, Internal Revenue Service,
Washington, D.C.

DEAR Mr. PATTERSON: In response to your letter of February 13, 1976, I am enclosing my most recent evaluation of Managing Director Robert L. Rebein. To supplement that narrative, I think it important to bring to your attention a number of other factors about Mr. Rebein.

Prior to Mr. Rebein coming to the Commission in June, 1971, the ICC had experienced a rather lengthy period of budgetary difficulties which resulted in program curtailments at a time when the caseload was climbing at an uncontrollable rate. This, coupled with internal deficiencies in our fiscal spending system which required extreme cutbacks in promotion and hiring practices, purchasing and other staff support, presented the Commission with tough decisions on productivity and morale. Mr. Rebein im-

mediately provided the assistance and technical support to the then Managing Director to correct this difficult situation. His vast array of abilities, professional approach to all tasks and his leadership qualities soon became evident. Upon the Managing Director's retirement one year later, Mr. Rebein was promoted unanimously by the entire Commission in recognition of his outstanding performance.

In the almost five years Mr. Rebein has been with the ICC, our budgetary formulation has been strengthened, our relations with OMB and the respective appropriation committees of Congress have reflected in favorable response to our budget requirements, and our fiscal spending operations have been a complete turnabout of what we had experienced in the past. In cooperation with the other Bureau and Office Heads, he has managed to gain control of the burgeoning caseload, identify and eliminate areas of "regulatory lag," and improve individual and overall productivity. The advice of his office is highly respected, and his leadership is highlighted by the mature manner in which he approaches mutual problems and the fairness with which he exercises his authority. Morale, both at headquarters and the field, has never been at a higher level.

Mr. Rebein was instrumental in the establishment of the internal study teams on regulatory reform which has resulted in numerous changes in the regulatory process. He has personally spearheaded a revitalization of the Commission's ADP operations and installed automated techniques in various segments of our operations. Another aspect of Mr. Rebein's responsibilities which should not be overlooked is the personnel program. He serves as the Commission's EEO Director, his Office coordinates other minority and handicap programs, and all personnel actions are under his personal control through authority I have delegated to him. During his tenure, we have successfully defended all adverse personnel actions, and I find his handling of these matters to be impeccable. He deals with personnel matters as he does every other task—with complete fairness and impartiality. He is thorough and decisive. He has evidenced an ability to recognize at an early stage the adverse aspects of personnel situations and their publicity potential. He has been very successful in approaching such situations with tact and control.

Mr. Rebein's consideration of other employment possibilities is a practical one. He serves in a non-career, executive position—GS-18. The President has recently announced his nomination of a new Commissioner who, upon confirmation, will replace me as Chairman. The Managing Director reports directly to the Chairman, and this close relationship normally results in a new Chairman desiring to name his own administrative assistant.

In closing, I could not recommend anyone higher for employment by your agency, and there would be no question of my rehiring him should the opportunity present itself. Please feel free to contact me if you desire any further information.

Sincerely yours,

GEORGE M. STAFFORD,
Chairman.

Enclosure.

MANAGING DIRECTOR REBEIN TO LEAVE; CHAIRMAN STAFFORD LAUDS ACCOMPLISHMENTS

Interstate Commerce Commission Chairman George M. Stafford today paid special tribute to Robert L. Rebein, the Commission's Managing Director, who will be moving to an executive position with the Internal Revenue Service in June. (Assistant Deputy Commissioner)

In his five years at the ICC—first as Assistant Managing Director and later as Managing Director—Rebein, 46, was directly responsible for a large number of far-reaching internal reforms which helped to eliminate costly red tape and put the agency on a

sound fiscal basis. During his tenure, several blue ribbon studies and an in-depth examination of the ICC's compliance program were undertaken at Rebein's direction, and presently are at the focal point of an on-going Commission effort to make surface transportation regulation more responsive to the public's interest and needs.

Among many of the changes effected under Rebein's direction were the introduction of budgetary controls, a system of office and bureau reappraisals to help reduce regulatory time lags and speed case processing, advanced computer technology, a new set of procurement procedures, and an expanded Commission training program for both professional and clerical employees.

"During Mr. Rebein's time here, he has shown himself to be a true professional and dedicated public servant in every respect. Chairman Stafford said, "On behalf of everyone at the Commission, we wish him well and continued success as he moves to his new position."

HUGO BLANCO EPILOG

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. KOCH) is recognized for 10 minutes.

Mr. KOCH. Mr. Speaker, on March 1, 1976, I placed in the CONGRESSIONAL RECORD correspondence that I had concerning Hugo Blanco. As a result of that correspondence, the U.S. Committee for Justice to Latin American Political Prisoners issued a public response in which they sought to refute the reasons given by the State Department for its denial of a visa to Hugo Blanco. That committee asked that I place their statement "setting the record straight on Hugo Blanco" in the RECORD.

I thought it appropriate to bring the committee's response to the attention of the State Department for the latter's answer. I am appending both statements for the perusal of our colleagues.

It is often difficult to distinguish between terrorists and patriots at the time of the event. And it may well be that those labeled as terrorists now are ultimately accorded the status of martyred patriots by history. But those who must make decisions on the admission to this country of persons who have engaged in violent acts, particularly ones which result in death, must exercise that judgment carefully even if it results in erring on the side of excessive caution—so long as the decision is not arbitrary or capricious. In this case, I do not believe the State Department was either arbitrary or capricious.

The statement follows:

SETTING THE RECORD STRAIGHT ON
HUGO BLANCO

[The following statement was issued to the press March 22 by the U.S. Committee for Justice to Latin American Political Prisoners.]

On March 16, in a nationally syndicated column, William F. Buckley, Jr. attacked the United States Committee for Justice to Latin American Political Prisoners (USLA) and one of its officers, Dr. Benjamin Spock. Buckley went so far as to call Spock "the incarnation of the dupe" for having criticized Secretary of State Henry Kissinger's denial of a visa in the case of Hugo Blanco.

Kissinger's action prevented Blanco, a Peruvian peasant leader, author, and former po-

litical prisoner, from honoring speaking commitments at more than a dozen universities, where he was to speak on the plight of political prisoners in Latin America. The speaking tour was being organized by USLA.

Editorials in leading newspapers and other protests from members of Congress, academic associations, and civil libertarians forced Kissinger to reverse his position and recommend to the Immigration and Naturalization Service (INS) that it grant Blanco a visa. The INS refused. It is these prominent supporters of the right of the American people to hear all points of view without government censorship who are a special target for Buckley's ire in his column.

Buckley based his information on an exchange of correspondence inserted in the March 1, 1976 *Congressional Record* by Representative Edward I. Koch of New York. [See *Intercontinental Press*, March 15, p. 426.] Involved in the exchange were the USLA and Spock, who wrote Koch asking him to intercede on Blanco's behalf, and Robert J. McCloskey, assistant secretary for congressional relations in the State Department. In a final letter to Spock, Koch indicated he was withdrawing his earlier support for a visa.

In his column Buckley congratulates Koch: "WFB to Koch. Nice going." Buckley quotes selectively from this exchange, excluding evidence or arguments made on behalf of Blanco. He also fails to address himself to the issue involved—of official government censorship of what the American people are allowed to hear—implicitly taking a procensorship attitude.

Why did Koch withdraw his support? He echoes the government position when he writes to Spock, "Don't you agree that if, in fact, he admitted responsibility for the murder of three policemen and advocates the use of violence that those are grounds for rejection?"

The INS refused a visa on the same grounds that the State Department had earlier, stating that "he [Blanco] was found to be ineligible for a visa under Section 212(a)(28) of the Immigration and Nationality Act because of his previous terrorist activities and his affiliation with certain communist organizations."

From the beginning, the different government agencies have consistently maintained a veil of secrecy around the case, refusing to specify what "terrorist activities" or "communist" affiliations Blanco was supposedly guilty of. In a letter to Congressman Koch dated January 29, 1976, for example, McCloskey said that "much of the information available to the Department is classified for reasons of security and therefore cannot be divulged. . . ."

Some of this information must have been "leaked" to Representative Larry McDonald of Georgia, for, in the *Congressional Record* of December 19, 1975, he unleashed a bitter attack on the *Washington Post* and *Boston Globe* for their editorials protesting Blanco's exclusion as undemocratic.

In the article, McDonald describes Blanco's revolutionary-socialist views and his affiliation to the Fourth International, something Blanco himself has made clear in numerous interviews in the international press. However, he then goes on to quote what he calls "secret" documents that he claims prove Blanco is a terrorist in theory and practice. He offers only one instance of "proof," asserting, "In that same year [1962], Blanco led a raid on a police post in Peru to secure weapons. During the raid Blanco shot a police officer to death. He was captured in May 1963, and was eventually sentenced to 20 years imprisonment."

This example was to be used by McCloskey in the January 29 letter to Koch, attributing McDonald as his (McCloskey's) source, although in his account Blanco is alleged to have killed three, not one, policemen! He charges that Blanco made a "declaration

853 Broadway, Room 414, New York, New York 10003.

that he took full and sole responsibility for the murders of three policemen which occurred during a raid he and his followers made on a police station in Peru during 1962."

In their haste to accept the State Department and Immigration Service versions of Blanco's history, based on "secret" records, Messrs. Buckley, McDonald, and Koch would have done well to consult the public record. By not doing so they accept a one-sided version of what actually happened, replete with serious errors of fact and errors of omission.

SETTING THE RECORD STRAIGHT

In a letter to its national sections dated December 1966, Amnesty International announced that "we have sent on behalf of Hugo Blanco an appeal for clemency to President Belaunde Terry of Peru." The letter then went on to give some background to the case, which is worth quoting at length:

Hugo Blanco, now 32 years old, was a student of Agronomy at Lima University when in 1961 he left his studies to organize the Indian peasants of the Alti-plano, the most backward region in Peru. His efforts succeeded in mobilizing the peasantry of the Cuzco region to demand the abolition of enforced labour for the landlord, the redistribution of land and the establishment of wages instead of payment in kind. He also started schools and opened dispensaries.

Peasants marched into abandoned lands and took possession of them without violence invoking an old law by which squatters get right to land after a certain period of time. The Latifundistas (large landowners) used their influence and in 1962 the Peruvian Government sent military forces to stop this take-over.

There are conflicting versions of what then happened. According to the prosecution at his trial his band killed three guards during an attack on a police station. According to Marcel Niedergang in "Le Monde" he was ambushed and only fired in self-defence, subsequently resuming meetings of peasants. It is almost certainly untrue that he was associated with the violent M.I.R. (Revolutionary Movement of the Left), which was only organized after his arrest and from which he publicly dissociated himself.

On December 7, 1966, Le Monde took up the question of violence and the Blanco-led land-reform movement:

"No violence occurred at the beginning of this movement, which caught the landowners and the government by surprise. But incidents inevitable flared up and multiplied between the hated 'gamonales' (foremen) and the landless peasants. An order was issued to arrest Hugo Blanco. On November 14, 1962, two policemen fired at the union leader. He fired back, killing a policeman and wounding another."

Buckley et al. neglect to point out that the government lodged what it considered was a far more serious charge against Blanco. As Marcel Niedergang, writing in *Le Monde*, January 28, 1967, reported: "Hugo Blanco was sentenced on two counts for organizing and directing peasant unions in Valle de la Convencion near Cuzco between 1959 and 1962, and for killing two members of the national guard on November 13, 1962." Niedergang also reported that Blanco's lawyer had entered a plea of self-defence in the killing of the two policemen, contradicting McCloskey's assertion that Blanco "took full and sole responsibility for the murders of three policemen."

During his trial Blanco himself said: "... I explained that in all senses and at all times, we had acted only in self-defence; that not only had the origin and activity of the guerrilla band been defensive acts in the face of repression, but also that in our encounters with the police we had saved our lives by firing. This was indisputable. Nor could anyone deny that we never intended to kill anyone, as we proved by our treat-

ment of the policeman who had fired at us in Pujura—after we had disarmed him, we set him free. Nor could our concern in helping the wounded be denied, as was shown by the fact that we forced the town doctor (after getting him out from under his bed, where he had been hiding) to treat the wounded policeman, and that we offered our own scanty medical supplies for first aid; all this was done at grave risk to our safety and lives."

As the Amnesty statement explained, under Peruvian law, land not being used was open to squatting by peasants, who could till it and claim it as their own. The landlords ignored the law and violently attacked the peasants, killing many in different encounters. The peasants demanded police protection only to have the latter side with the landlords in the attacks. In response the peasant unions formed first "Union Defense Brigades," and later militias, and finally a guerrilla band, as the repression escalated. Mass assemblies of thousands of peasants democratically voted to set these up and voted Blanco to head the defense effort. During the union organizing drive, Blanco himself was the object of two assassination attempts.

THE TRIAL

Also not to be found in Buckley's column or the *Congressional Record* are the facts of Blanco's trial:

Peruvian law required arraignment and charges within six months of arrest. Blanco and his followers were not even charged for more than three years.

Blanco and other defendants were tortured.

Blanco was held in solitary confinement for three years prior to his trial.

The proceedings were held in Spanish, a language four-fifths of the defendants could not speak, since they were Quechua-speaking Indians.

The trial should have been before a civil court. The law was rewritten to place them under military jurisdiction.

The military acted as judge, jury, and prosecutor.

Both of Blanco's lawyers were arrested and harassed in other ways. They were given one day's notice of the trial.

No defense witnesses were allowed, including police involved in the encounters whom the defense wished to call.

Prosecution witnesses did not appear either, a violation of law. Statements attributed to them were introduced as "evidence."

When Blanco appealed his twenty-five-year sentence, the military asked for the death penalty.

Is this Messrs. Buckley, Koch, McDonald, and McCloskey's idea of a fair trial?

Only a worldwide defense campaign supported by Amnesty International, the International League for the Rights of Man, USLA, the Chamber of Deputies of Chile, forty-three Belgian MPs, ten British MPs, Jean-Paul Sartre, and thousands of others stopped the hand of Blanco's executioner.

Is Hugo Blanco, as our government would have us believe, a common criminal? The facts speak for themselves. His "crime" was a political one, the crime of organizing landless peasants in a long overdue land-reform movement that defended itself against repression of the dictatorship of Belaunde Terry.

Later Peruvian governments recognized him as a political prisoner and released him in an amnesty for political prisoners in 1970. The regime of Juan Velasco Alvarado went so far as to offer him a governmental post, a position hardly suited for a "cop-killer."

The ridiculous claim that Blanco is a "terrorist" is merely a diversion. It is a brazen pretext used by Washington to justify its undemocratic exclusion of a former political prisoner whom organizations representing tens of thousands of Americans have demanded the right to hear.

The real issue that Messrs. Buckley, Koch, McDonald, and the government duck is whether the U.S. government should be allowed to censor the views the American people may hear or whether the Bill of Rights will be respected 200 years after the American revolution for independence.

Those agreeing that the American people have a right to hear all points of view, including Hugo Blanco's, without government censorship, are urged to write Messrs. Buckley, Koch, McDonald, and the attorney general, Edward Levi* (who now has jurisdiction of the case).

ENDORSERS OF THE RIGHT OF THE AMERICAN PEOPLE TO HEAR HUGO BLANCO—PARTIAL LIST

Rep. Bella Abzug (D-NY).
Robert Allen, mng. ed., Black Scholar.
Vernon Bellacourt, AIM.
Noam Chomsky.
Rep. Ronald V. Dellums (D-Calif).
Richard Fagen, pres., Latin American Studies Association.
Francis (Cissy) Farenthold.
Rep. Donald Fraser (D-Minn).
Georgia State U., student Govt. Assn.
Gene Guerrero, dir., Georgia ACLU.
Hon. Jose Angel Gutierrez, Zavala County, Tex.

Rep. Michael J. Harrington (D-Mass).
Mayor Fred Hoeheinz, Houston.
Sen. Hubert H. Humphrey (D-Minn).
Albert Lehman, Minn. Council of Churches.

S. F. Luria, Nobel Laureate.
Peter C. Magrath, pres., U. of Minn.
John McAward, Unitarian Universalist Service Comm.

Minn. Fed. of Teachers, State Exec. Bd. AFL-CIO.

Lt. Gov. Rudy Perpich, Minn.
Ramona Ripston, exec. dir., So. Calif. ACLU.

Mark Rohloff, Amnesty Int'l, San Francisco.

Muriel Rukeyser, pres., F.E.N.
Benjamin Spock.

Percy Sutton, pres., Borough of Manhattan, NYC.

George Wald, Nobel Laureate.

DEPARTMENT OF STATE,

Washington, D.C., May 24, 1976.

Hon. EDWARD I. KOCH,
House of Representatives,
Washington, D.C.

DEAR MR. KOCH: You will recall that I wrote to you on April 28 about the visa case of Hugo Blanco.

As we stated previously, Mr. Blanco was refused a visa under Section 212(a)(28)(F) of the Immigration and Nationality Act on the basis of reliable information of a confidential nature. We are not permitted to disclose such information under the provisions of Executive Order 11652 (dated March 8, 1972).

We are providing you information from public sources which support our findings relating to Mr. Blanco's participation in Communist organizations and anti-government directed violence. We made an effort to obtain copies of court records; we were, however, advised by Peruvian authorities that records involving political or security matters are considered confidential and are not available.

The records show that in the early 1960's when Mr. Blanco was about 26 years of age he was a member of the Frente de Izquierda Revolucionario (FIR) as well as a member of another revolutionary group, both of which are described as Trotskyite Communist or-

* c/o New York Post, 210 South Street, New York, New York 10002.

* U.S. House of Representatives, Washington, D.C. 20515.

* Justice Department, Washington, D.C. 20530.

ganizations. The FIR organized several bank robberies in 1962-63. The following statements were identified and quoted in the Congressional Record of December 19, 1975, as comments written by Mr. Blanco in 1962:

"Now I feel even more deeply grateful to memory of Comrade Leon Trotsky, . . . Following his method of 'Permanent Revolution' we are reaching victory, comrades. That is why it is vital to bear in mind some of the general principles of our Trotskyist-Leninist doctrine:

"The working classes will achieve the recognition of their rights by violence, and not by legal forms. . . .

"... We have seen the uselessness of court cases, memoranda, delegations to the government, sending telegrams, elections, candidates, etc. . . .

"Looking at this, we can see that to gain our triumphs, we have not waited for the bourgeois legalist government. Instead we have broken and smashed the power of that government in our area, . . . That is, we are carrying out a revolution, and not waiting for reforms or half-measures within the bourgeois regime."

In 1962, Blanco led raids which resulted in the murder of three policemen. He was arrested in 1963 and sentenced in 1966 by the Military Council to 25 years in prison. (See enclosed quotation from Correo.)

In June of 1963 Mr. Blanco was quoted in El Comercio as having assumed responsibilities for directing the terrorists groups but he disclaimed guilt for the killing of the three policemen. Our Embassy in Lima, however, reported in 1966, the year of Blanco's trial, that Blanco assumed full and sole responsibility for the murders. The source of the Embassy's report is not identified.

Mr. Blanco was released from prison in 1970 on amnesty and was later expelled to Argentina because of his continued revolutionary activities. Subsequently, he was expelled from Argentina for the same reason and was given refuge in Chile.

I am enclosing a report of the Hearing of the Senate Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws which contain references to Mr. Blanco. I also enclose copies of several issues of International Internal Discussion Bulletin, a publication of the Fourth International, which contain some comments on Mr. Blanco's current views.

In considering this case, we wish to point out that each year a relatively significant number of visa waivers are obtained for aliens identified as members of Communist organizations who wish to come to the United States for a temporary visit. Mr. Blanco is one of very few denied the benefits of a waiver of ineligibility. The decision was based on his overall record, particularly his record of violence.

Sincerely yours,

ROBERT J. McCLOSKEY,
Assistant Secretary
for Congressional Relations.

POLITICS IN ARMY PROMOTIONS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. MEZVINSKY) is recognized for 10 minutes.

Mr. MEZVINSKY. Mr. Speaker, last week, on May 19, I published my letters to DOD Secretary Donald Rumsfeld demanding answers to allegations that an Army Reservist's promotion had been illegally blocked by former Secretary of the Army Callaway. In their column today, Jack Anderson and Les Whitten have outlined these charges and revealed

the results of their own investigation. I share this with my colleagues:

ARMY SLEIGHT OF HAND

(By Jack Anderson and Les Whitten)

The Army slipped a military promotion list past President Ford last year without telling him it was engineered by cantankerous old Sen. Strom Thurmond (R-S.C.), as part of a personal vendetta.

The unwitting Ford let the dubious document go through even though three days earlier he had signed a legitimate promotion list and had ordered it sent to the Senate.

There is evidence that the President was the victim of some sleight of hand, involving fancy razor-blade work by the Army on presidential documents. Indeed, White House records may actually have been faked.

The Defense Department began an investigation of the bizarre case only to have it quietly quashed, say our sources. Military spokesmen deny any such quashing. The Justice Department also started an investigation that has gotten nowhere.

Thurmond has a strong whip hand over both the Army and Justice, it's worth noting, as a power on the Senate committees which oversee the two departments.

The events that led to the document tampering began as an exercise in Pentagon politics. A brilliant young lieutenant colonel, Wilfred Ebel, became a leading contender to head the 100,000-strong Reserve Officers Association.

Stern old Strom, a past president of the association, looked upon it as his private preserve. He fully intended to install his own protégé, a lackluster World War II crony, Maj. Gen. Milnor Roberts, as the new president.

But the 44-year-old Ebel had an awesome record, complete with medals and citations for "tremendous service" and "personal integrity." His name was also one of 405 on a promotion list that had been drawn up by the Army's most respected officers. It had been approved by the Pentagon and, on Jan. 14, 1975, had been signed by President Ford. A Pentagon memo adds that Ford had "forwarded (it) to the Senate on 15 January 1975."

But a funny thing happened to Ebel's name on the way from the President's desk to Capitol Hill:

Thurmond forthwith directed an aide to call the Army and request, as a classified Army document attests, that Ebel's "nomination . . . be held in abeyance."

And, although the President already had signed Ebel's promotion and had readied it for the Senate, the Army's irrepressible political boss, then-Secretary Howard "Bo" Callaway, sent Ford a new promotion list. Incredibly, Ebel's name had been cut out with a razor blade. Then the sheet had been xeroxed to make it look like Ebel's name had never been on the list at all. Our investigation has raised still other questions about the case.

For instance, the documents sent to the Senate are highly unorthodox. The final page of the new list is fine bond paper, with Gerald Ford's signature. But the sheets on top, one of which contains the xerox sheet with Ebel's name razored out, are all xerox paper. No other Army nomination papers are this mix of good bond and crude paper.

The possibility that Mr. Ford never actually signed the final promotion list but that his signature was attached to it is heightened by the fact that the bond paper nominations are prepared in St. Louis on a special typewriter. It is difficult to see how a new last page could have been typed up in three days in St. Louis and sent to the White House.

What appears to have happened, despite White House denials, is that the final page from the first list was used and the new list, excluding Ebel's name, was stapled on

top. This would mean, according to Ebel's lawyer, former Pentagon Assistant General Counsel Frank Bartimo, that Mr. Ford never actually signed a list without Ebel's name on it.

H.R. 13655. "THE AUTOMOTIVE TRANSPORT RESEARCH AND DEVELOPMENT ACT OF 1976" CAN HELP BREAK OUR DEPENDENCE ON FOREIGN OIL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. Brown) is recognized for 5 minutes.

Mr. BROWN of California. Mr. Speaker, next Tuesday this body will have an opportunity to consider a bill which can lead to the replacement of gasoline as a motor vehicle fuel. The bill, H.R. 13655, the Automotive Transport Research and Development Act of 1976 is primarily a legislative program designed to develop more fuel efficient, and environmentally sound propulsion systems, or engines. However, the Administrator of the Energy Research and Development Administration is asked to investigate alternate fuels, as well as alternative engines, in the effort to reduce our massive consumption of petroleum in the transportation sector.

It is somewhat shocking to realize that the transportation sector uses nearly the same amount of petroleum per year as the United States imported last year. Every analysis of the U.S. energy picture comes to the same conclusion: If we are to reduce oil imports, we must drastically reduce the use of oil in the transportation sector.

Mr. Speaker, I know that there are other approaches to reducing our use of oil. Among them are price increases, import quotas, and fuel efficiency standards. While each of these proposals have merit, and each are implemented to some degree, they do not remove the need for a vigorous research, development and demonstration program. In fact, a good case can be made that without further research and development, the other approaches will only create hardships.

What could a research and development program accomplish? First of all, it could result, and our committee believes the chances of this are very good, in a radically different type of automobile engine which would have a 100-percent improvement in fuel economy over the present internal combustion engines. Second, it could result in the use of a new fuel, not derived from oil, which would completely remove the need for imported oil to fuel that vehicle. Third, it could result in a more competitive and diversified automobile industry. While this last result is not an assured thing, the other Committees of Congress could help make it happen while the 5-year research program established by the bill is proceeding.

In closing, I would strongly recommend to my colleagues the report, No. 94-1169, that accompanies H.R. 13655. There is much valuable information included, and it should remove any doubts that one might have about the need for this legislation. I urge your support next Tuesday.

LEGISLATION TO EFFECT CHANGES IN FARMERS HOME ADMINISTRATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. HARKIN) is recognized for 5 minutes.

Mr. HARKIN. Mr. Speaker, today I have introduced legislation which makes several changes in the way Farmers Home Administration—FmHA—designates county committees. It changes the method of appeal for farmers denied FmHA assistance. It allows the Secretary of Agriculture to take emergency measures to speed the processing of loan applications in areas hit by a natural disaster.

After a study of the county committees system in FmHA, I concluded it was first of all riddled with politics, and second, often created needless delays and sometimes arbitrary decisions.

On February 4, 1976, I submitted testimony before the Subcommittee on Conservation and Credit of the Agriculture Committee on the question of designated attorneys and the need for a formalized procedure of appeals for individuals denied loans by the Farmers Home Administration. On March 18, 1976, I introduced legislation to eliminate the political spoils system involved with the designation of FmHA attorneys.

Today, I am introducing legislation to establish an appeal procedure for farmer and housing loans.

An appeal procedure is essential to the uniform operation of any program or enforcement of any law. Most county FmHA supervisors who must ultimately rule on these loan applications are competent, dedicated civil servants. However, because they are human, errors are made on these critical, life-and-death decisions. FmHA seems to be denying this fact with their present operating procedures. For this reason, my legislation mandates that county committees be elected in an identical manner with the election of ASCS county committees which have worked remarkably well over the years. A poll in the April 1976 issue of Successful Farming indicates that farmers feel that ASCS offices treat all requests for funds equally by a 3 to 1 margin. Hopefully, such grassroots democracy will insure a fair hearing for FmHA loan applicants at the county level.

My bill also establishes a five-member appeal board on the State level. I have attempted to obtain data regarding the nature and operation of the present administrative appeal procedure in Iowa. Specifically, on October 14, 1975, I requested from the Iowa State director of FmHA—

... the total number of individuals (by county) who appealed to you as State director, and the number of these appeals which were overturned at the State level.

The response received in a letter of December 22, 1975, stated:

Our records show only one appeal (Adair County) was made, and we concurred with the county supervisor and the county committee on that case.

Mr. Speaker, this would not be significant were it not for the many pleas for help from farmers which I received and referred to the State director requesting a review of the merits of the case. In testimony before the Subcommittee on Conservation and Credit in early February, Frank Elliott, Administrator of the Farmers Home Administration, stated that the Washington office never overturns the ruling of a FmHA county committee. Because of the stated refusal to overturn a local decision, and because of the apparent lack of a formal appeal procedure, my legislation mandates that all loan applicants who are denied Farmers Home assistance for farm or housing loans be informed in writing as to the reasons for denial and be informed of the right to appeal.

Mr. Speaker, during a time of natural disaster in farming communities, a large number of farmers are in need of emergency credit. Drought has occurred in my district over the past 2 years. Because of the increasing production costs tied up in a crop, denial of FmHA emergency assistance can often result in bankruptcy, especially now that a "credit elsewhere" is required under Public Law 94-68.

During the past few years, the expanded role of the Farmers Home Administration as the coordinator of a wide range of rural development programs has placed even greater burdens on the county supervisors. In many areas, an increased work load has resulted in a decline of attention to the regulations set out on the Federal level. Only through an appeal procedure, which is spelled out in my legislation, can uniformity be guaranteed.

My legislation would also allow greater administrative flexibility for the Department of Agriculture in processing Emergency Loan applications on the local level. After a major disaster such as flooding or drought, the demand for emergency credit skyrockets. Timely consideration of applications for assistance is important to the farmer who has debts on his crop and who must plan for the coming year's crop.

Therefore, to speed the application process, my legislation would allow the Secretary to utilize the ASCS county committee as well as the present FmHA county committee for the purposes of determining loan eligibility.

This provision combined with my earlier legislation, H.R. 12650, to increase the number of designated attorneys who conduct loan closings for Farmers Home Administration, will greatly speedup the processing of these loans.

Mr. Speaker, I would like to insert for the record an article which appeared in the Des Moines Register, on February 26, 1976, on page 1, dealing with the appointment of FmHA county committees. I think it clearly illustrates the need to make some fundamental changes in the county committee selection system:

PATRONAGE USED TO FILL FmHA PANELS IN IOWA—COUNTY UNIT MAKEUP BY PARTY IN POWER

(By George Anthan)

WASHINGTON, D.C.—The U.S. Farmers Home Administration (FmHA) political patronage system in Iowa extends to selec-

tion of county citizen committees, which check on the eligibility of prospective borrowers, officials said Thursday.

They said that since 1969, when the Nixon administration took office, most of the persons selected for the county committees have been Republicans. During the eight years of the Kennedy-Johnson administrations, they said, most, if not all, of those named were Democrats.

The three-member county committees certify that a person seeking to borrow FmHA money is eligible, that he has been turned down for conventional credit, that he can repay the loan and that he has adequate security.

AGENCY APPROVES LOANS

The citizen committee does not approve the loan. It makes recommendations to the FmHA's county, district and state offices. In all cases, FmHA officials said, final approval of a loan is left up to the agency itself.

FmHA officials and some former county committee members who were interviewed emphasized they knew of no cases where the prospective borrower's political beliefs had anything to do with whether he received the federal loan.

One former county committee member, a southwest Iowa Democrat, said "I just found it rather intriguing that in doing away with the spoils system, we still retained this remnant."

LAWYER SELECTION

The FmHA has been operating a political spoils system in selection of the lawyers it certifies as eligible to handle legal matters involving its loans to farmers and to middle and low income families in the state.

FmHA officials in Washington now have directed that the agency's Iowa office include all lawyers who apply on its list of designated attorneys. The lawyers will have to meet certain bonding requirements.

A Northwest Iowa Democrat who served on an FmHA county committee during the Johnson administration said, "The FmHA now has three farmers on the county board and they're all Republicans. The Democrats did the same thing. What happens is that the FmHA supervisor in each county makes it clear that members of the citizens board must be members of the party in power."

"IN HISTORY"

Iowa state FmHA Director Robert Pim said the patronage method of choosing county committee members "goes back into history."

Pim said the county board members receive \$7 for each meeting they attend, and each unit meets about once a month. The members also receive \$3 if they drive 25 miles or less to the meeting, \$5 if they drive up to 50 miles and \$7 if they drive more than 50 miles. Each member serves for three years.

Pim and FmHA county supervisors select three persons to fill each vacancy, then send the list to him. Pim said he usually selects the first name on the county supervisor's list. Several persons who are familiar with the system said the list in most cases is submitted to the Republican county central committee before being forwarded to Des Moines.

But Pim emphasized that FmHA regulations clearly state that no one who holds a political party office or who is active in party affairs may serve on the county board.

NATURAL GAS PRICES—A REASONABLE APPROACH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Colorado (Mr. WIRTH) is recognized for 5 minutes.

Mr. WIRTH. Mr. Speaker, the question of natural gas pricing will again be

before us—sometime in the next month or so—and in an attempt to move the debate to a workable ground, I today introduced H.R. 14046. A full description of this legislation appears today in Extensions of Remarks.

The thrust of the bill is simple: Over the next few years, energy prices must reach a more realistic level. But this rise in price cannot happen overnight. Consequently, we must find a reasonable way of obtaining this necessary—if painful—price rise.

I believe that H.R. 14046 provides the gradual approach that will reflect this new price realism, while providing incentives for exploration without undue cost to the consumer. It is clearly difficult to find the measure which will balance all of these interests—H.R. 14046 comes as close as anything I have seen. I commend the bill and its explanation to my colleagues.

SCHLESINGER ON THE MILITARY BALANCE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. FASCELL) is recognized for 5 minutes.

Mr. FASCELL. Mr. Speaker, the current issue of Newsweek contains an important article by former Defense Secretary James Schlesinger on the military balance. The article succinctly summarizes Dr. Schlesinger's views on the major components of military strength which should be taken into account when comparing the relative positions of the United States and the Soviet Union. I commend the article to the attention of my colleagues:

[From Newsweek, May 31, 1976]

THE MILITARY BALANCE (By James Schlesinger)

The current political debate should be welcomed, for it has focused public attention on the relative decline of America's military strength. As yet it has contributed little to public understanding either of the underlying rationale for our military posture or of specific vulnerabilities and remedies. In response to Governor Reagan's viewings-with-alarm, President Ford has provided the usual assurances that all remains for the best in the world. Yet, the question of who is No. 1 is both imprecise and misleading. To be sure, in certain categories (such as tactical air or mobility forces) the U.S. remains No. 1; in certain critical categories (notably offensive power around the Soviet periphery), it is certainly the Soviet Union.

The fundamental question transcends such comparisons. Which side has the greater confidence in performing its own, rather distinct, military mission? Even when we add to our own weight the substantial forces maintained by our allies, do we have adequate confidence in our military posture—or are we living with too high a level of risk? Given the disappearance of U.S. strategic superiority, the growing significance of conventional forces, and the adverse balance in those forces, the answer is less than reassuring.

OUR DEMANDING MISSION

Our military mission is complex and demanding, more so than that of the Soviet Union. The United States must be able to project its own power into the Eastern Hemisphere over distances of many thousands of miles—to support deterrence and defense structures protecting nations on the margins of the main power of the Soviet Union.

By contrast, the basic Soviet military mission is far simpler: to maintain military dominance within the relatively compact land mass of the Soviet Union and its satellites—and to achieve a clear military advantage around the periphery, thereby posing a potential threat to all the adjacent states, whose allegiances it seeks to change.

By this standard none can take much reassurance in our over-all military posture. Nowhere on the Eurasian Continent is the Soviet position itself threatened by a local imbalance. In all sectors around the Periphery, the Soviets possess a clear edge, hopefully not decisive. Everywhere there exists serious vulnerabilities for the coalition of nations free (and unfree) led by the United States: on the flanks of NATO, in the Middle East, even in the central region of NATO. The underlying question remains how securely—or even how long—our position can survive, when we remain outclassed in these vulnerable areas of potential military tension.

LOCAL SOVIET DOMINANCE

Strategic forces, which receive a disproportionate share of attention, have historically been regarded as a panacea that could compensate for the severe deficit in conventional forces around the periphery of the Soviet Union. Any edge in strategic forces previously possessed by the United States has already disappeared or is in the process of disappearing. Whatever inhibiting effect on Soviet exploitation of local conventional superiority that earlier strategic edge provided has now been lost. Nuclear parity continues to provide some restraint, but it is a weakened one. Now that our nuclear advantage has disappeared, we are obliged closely to examine deficiencies in our general-purpose forces.

In light of our prior nuclear superiority, the U.S. and its allies have never attempted to match Soviet conventional capabilities. No one has yet suggested that U.S. ground forces are "second to none." Soviet ground combat forces exceed our own at least threefold. Soviet conventional offensive power directed toward the adjoining areas is disquieting and potentially destabilizing. Thus, the issue is more complex than the relative U.S.-Soviet balance, yet it can readily be posed. Even with the substantial diversion of Soviet forces to the Sino-Soviet border, even with the substantial help of the 2.5 million men our allies keep under arms, does the supplementary military strength contributed by the U.S. provide sufficient protection in the areas of potential tension—not Mexico or Canada, but Western Europe, the Middle East and Northeast Asia?

Two arguments have been put forward by the White House: (A) the United States remains "unmatched" and "unsurpassed," and (B) the Soviet Union requires superior forces to compensate for a severe threat from China. Argument (B) may be logically defensible, even though it disregards the grave risks of trying to shift much of the burden onto the Chinese, risks also overlooked by the defense critics who promote this argument. Moreover, it leaves unanswered one serious question: how much Soviet superiority around the periphery can we accept? But even if we were to accept (B), we find that it is logically irreconcilable with (A). For (B) rationalizes a Soviet superiority that (A) denies. It implies rejection of the view that the United States remains No. 1, and amounts to the proposition that Soviet problems are so large that the United States need not match Soviet military power.

SOOTHING WORDS

Ironically, the belief that the United States today remains "unsurpassed" and "unmatched" militarily also implies acceptance of the arguments of Defense-budget critics, such as Senator Proxmire and Congressman Aspin. Why should Congress not have cut \$40 billion out of the Defense requests over the years—if indeed we remain "unsur-

passed" today? If so, earlier Administration requests must have been larger than needed; thus, yesterday's Congressional cuts would apparently be justified.

Indeed, our supposedly "unmatched" status would also make our deep concern regarding the present Soviet arms buildup unwarranted—just as the Defense critics suggest. The Soviets would just seem to be attempting to "catch up." (They're No. 2 and must try harder.)

The Department of Defense continues to underscore the gravity of the Soviet threat. It has provided little support for the President's view that we remain unsurpassed. The best support DOD has been able to muster is to characterize the balance as "rough equivalence." That could be taken to mean that our ability to dominate the approaches to the Gulf of Mexico is a sufficient offset to a hypothetical Soviet ability to dominate the approaches to the Persian Gulf. Given the real-world asymmetries and the major differences in our security requirements, that would hardly be consoling.

SHORT DEMOCRATIC MEMORIES

(Mr. HANLEY asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. HANLEY. Mr. Speaker, last March 25 I had the occasion to share with you and our colleagues some observations about the redoubtable James A. Farley. Especially noted were his sage observations concerning the internal political operations of Democratic convention politics and the outlook for our party this fall. He continues to display those qualities of mind and human spirit which have been the bedrock of the 20th century social and economic reformation which we now carry forward.

The prominence of Jim Farley as the mold of much that we now take credit for as the Roosevelt legacy makes all the sadder the disregard which has been shown him by the party organization in New York State. During the selection of at-large delegates to the National Democratic Convention, the State Democratic committee had the opportunity to select from among hundreds of applications of men and women seeking to represent a candidate or uncommitted position at the convention. While there was understandable concern for the rights and representation of all groups, especially for the traditionally under-represented groups, there seemed to be no regard for the quality of service which some delegates could bring to the distinction of their selection. It was particularly grievous to me that those who managed that selection process saw fit to bypass Jim Farley when it came time to name those who would represent the candidacy of Senator HENRY JACKSON, whom Jim Farley had endorsed.

I think it speaks well of Jim Farley that he caused no rancor, threw up no picket lines, called no denouncing press conference. Like the gentleman he has always been, he took the slight with a grace it did not deserve.

Nor am I alone in this regret that Jim Farley was not accorded the salute and respect which he so clearly merits as one of the senior statesmen of our party. I enclose the following editorial commentary for the further edification of our fel-

low Members in the hope that they, too, will decay this oversight.

Hopefully, Jim Farley will be with us on the platform in Madison Square Garden this July in a role which befits his deserved prominence.

The editorial referred to follows:
[From the Watertown (N.Y.) Daily Times,
Apr. 27, 1976]

SHORT DEMOCRATIC MEMORIES

Were it not for his ebullience and his experience in the ways of politics, James A. Farley would have reason today to sense a certain bitterness. Now 87 years old, his career as a Democrat began at the age of eight when he first carried a torch in the "Bryan for President" parade in 1896. In 1912 he was the town clerk in Stony Point, and in 1918 he was a delegate to the state convention which nominated Alfred E. Smith for governor. He was a delegate to the presidential nominating convention held in New York City in 1924, and by 1928 he was secretary of the state Democratic committee, organizing Franklin D. Roosevelt's first campaign for the governorship.

As state chairman he put together the presidential nomination of Mr. Roosevelt in 1932, and served as the Roosevelt floor leader at the Chicago convention. Thereafter Mr. Farley was New York state chairman and national Democratic chairman. He was appointed postmaster general in 1933 and continued until after the 1940 nomination of President Roosevelt to a third term. He then resigned both his cabinet position and his national chairmanship. However, he continued on until 1944 as chairman in New York state.

In spite of credentials like this, his desire to be a delegate in 1976 at the first national convention in New York City since his first, in 1924, was rejected. Of all the 500 Democrats who had applied for one of the 68 at large seats, he is clearly the most prestigious and the most qualified. Except that his party seems to have forgotten about him.

Robust and active today, Mr. Farley possesses his old time mental agility and the physical strength which convention attendance requires. Unfortunately, almost two generations have moved into party politics and either never heard of him or had forgotten about the most successful chairman in modern party history.

He knows what time has done to him. He has lived in the Waldorf-Astoria for the last 35 years. Recently Senator Frank Church held a dinner in the hotel in behalf of his presidential candidacy. Always a gentleman, Mr. Farley decided to pay his respects to Senator Church. He went to the room where the Church activities were in progress. He handed his card to the young Secret Service agent on the presidential candidate detail. The former national chairman heard the young agent say to another agent, "Who the hell is Jim Farley? He wants to get in."

[From the Irish Echo, May 8, 1976]

VERY BAD TASTE

The action of the New York Democratic State Committee in refusing to name James A. Farley as a delegate to the party's national convention is in the worst possible taste. No one more deserved the honor and yet, Mr. Farley was turned down by the party's current leaders.

In a political climate where both major parties have been plagued by inept and dishonest men for too many years the snubbing of a man whose integrity and political knowledge are almost legendary is disgraceful.

The Democrats apparently have realized that they made a mistake and are going to offer the post of "honorary national chairman" to Mr. Farley. But, that does not overcome the fact that he should have been the first at-large delegate chosen by the New

York leaders. Instead, he was not named at all. What a shame.

DAY CARE BILL: A VICTIM OF SCARE, DISTORTION

(Mr. PEPPER asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. PEPPER. Mr. Speaker, I would like to share with my colleagues an article which appeared in the Miami Herald, May 21, 1976, regarding a legislative proposal which would provide Federal aid for child and family service programs. For the last several months this proposal has generated strong opposition from parents, religious organizations, teachers, and Americans nationwide.

I hope this article will help dispel any misunderstanding and fear individuals may have regarding this legislation. I request permission to insert in its entirety at this point this article in the RECORD:

DAY CARE BILL: A VICTIM OF SCARE, DISTORTION

(By Phil Galley)

WASHINGTON.—A few months ago, congressional offices were being flooded with thousands of letters every day from alarmed parents demanding the defeat of a proposed bill that would provide federal aid for child-care centers and other family services.

The parents were responding to an anonymous flyer, circulated in chain-letter fashion, warning that the Child and Family Services Act would lead to a "Soviet-style system of communal child rearing" and destroy parental authority over youngsters.

Although the hysteria appears to have subsided, congressmen and senators still receive hundreds of letters daily from angry and disturbed parents who have not bothered to read the bill, which is totally misrepresented in the anonymous flyers.

One of the bill's chief sponsors, Sen. Walter Mondale (D., Minn.), calls the campaign "one of the most distorted and dishonest attacks I have witnessed in my 15 years of public service."

The Mondale bill is a revised version of legislation approved in 1971 by Congress but vetoed by then-President Nixon. It would provide federal grants to states, cities, counties, school boards and other local units that set up comprehensive day-care programs for the children of working or low-income parents.

Although no one knows for sure, the flyers appear to be part of a well-orchestrated campaign against the bill by right-wing political organizations and certain church and religious school interests, who fear that stricter and more expensive federal standards for day-care services could threaten their own day-care operations.

There is a hot congressional debate raging over the federal standards that should apply to day-care centers and over the range of services these centers should provide, and the bill's sponsors concede that the legislation has no chance of passage this year.

But not one of the bill's opponents in Congress has suggested that it smacks of the Communist plot described in the anonymous flyers.

"I've heard accusations that this bill will do everything from destroying the basic family unit to indoctrinating pre-schoolers with a Communist-atheist philosophy," said one congressman who opposes the Mondale bill.

"These charges are all patently false. A careful examination of the proposed legisla-

tion shows there is absolutely no substance to these accusations."

The principal document thousands of Americans are accepting as gospel is a two-page, unsigned mimeographed flyer entitled, "Raising Children—Government's or Parent's Right?"

It asserts that the Mondale bill "would take the responsibility of the parents to raise their children and give it to the government."

The propaganda sheet then tries to back up that sweeping statement by quoting from the Congressional Record, but without identifying the source of the material cited or the date it appeared.

For example, it states flatly, and falsely, that a "Charter of Children's Rights"—proposed but never adopted in Great Britain—has been incorporated into the Mondale bill.

It then proceeds to quote from this charter, adding generous embellishments and explanations of its own.

"All children have the right to protection from, and compensation for, the consequences of any inadequacies in their homes and backgrounds," the flyer quotes the charter as saying.

Then it adds, "In other words, never punish your child because he may come back on you with a civil suit."

Another charter excerpt: "Children have the right to protection from an excessive claims made on them by their parents or authority."

The flyer interprets this to mean that "if the mother or father asked the child to take the garbage out and the child doesn't want to, the parents have no right to insist on it."

It quotes again from the non-existent charter: "Children have the right to freedom from religious or political indoctrination."

For parents who wonder what that means, the flyer explains: "That means that you have no right to insist on taking them to church, if they do not wish to go. This also means that they have freedom to insist that they be taught nothing, nor any ideas, about God."

If that isn't enough to turn parents upside down, it adds, "This also means the parent could be reported (by his child) to authorities for expressing himself in his own home before his own children regarding politics and religion."

In summarizing the bill's threat to the American family, these scare pamphlets again purport to quote directly from the Congressional Record: "As a matter of the child's right, the government shall exert control over the family because . . . we cannot trust the family to prepare young children in this country for this new kind of world which is emerging."

The incredible thing, in the view of many congressmen and senators, is that this total fabrication has been accepted as fact by so many Americans, including ministers, school officials, radio stations and newspaper columnists.

After extensive research, supporters of the Mondale bill have traced the quotations from the Congressional Record cited by the anonymous flyers back to the 1971 Senate debate on a similar bill vetoed by Nixon.

They discovered that the quotations were taken from extraneous material inserted into the Record by Sen. Carl Curtis (R., Neb.)—none of which had anything to do with the bill under consideration in 1971, much less the Mondale proposal.

Curtis inserted the material quoted by the anonymous flyers into the Record in a 1971 Senate debate over an anti-poverty bill that included child-care provisions.

He was as surprised as anyone when some of the quotes turned up in the propaganda sheets opposing the Mondale bill.

In response to the scare campaign, Mon-

dale has issued an itemized rebuttal to the charges and added language to the bill to assert that:

Participation in the day-care program would be purely voluntary.

Policies for running each program would be set by local councils, half of whose members would have to be parents of the children enrolled in the centers.

The bill contains a strict and specific ban against any council or government interference with "the moral and legal rights and responsibilities of parents."

Despite the explanations, the mail in opposition to the languishing bill continues. Individuals, church groups, school officials and others are still writing letters to Congress repeating the inaccuracies and untruths expressed in the flyers.

SYNTHETIC FUEL SUBSIDY: BIG BAILOUT FOR FEW BARRELS

(Mr. OTTINGER asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. OTTINGER. Mr. Speaker, I would like to bring to the attention of all the Members of the House the wise analysis of the synthetic fuel loan guarantee program, H.R. 12112, by Katherine Fletcher, staff scientist for the Denver Environmental Trust Fund, presented before the House Science and Technology Committee on April 13, 1976:

The Administration's synthetic fuels program which would be launched by H.R. 12112 is based on a lengthy Task Force report prepared about a year ago for the President's Energy Resource Council. Although this study is frequently mentioned by Administration spokespeople, some of its more salient conclusions are not. Of particular importance are the following points made in the Task Force report:

"1. The energy supply from synthetic fuels will be 'negligible.' Hence, the usual references to independence from foreign oil, protection from another embargo, and improvements in our balance of payments situation do not justify a synthetic fuels subsidy program."

"2. The costs to the nation of any of the synthetic fuels subsidy program options considered by the Task Force (350,000 barrels per day, 1 million barrels per day, 1.7 million barrels per day) exceed the benefits."

In addition to these conclusions in the Task Force, it must now be recognized that the report was overly optimistic. For example, the Task Force used a projected end price of shale oil of \$14 per barrel. Yet the most recent estimate made available puts the price at \$21.70 per barrel. Even with the optimistic price estimates used in the Task Force report, the projected Treasury outlays were very large. Based on their calculations, the total federal outlay for a 350,000 barrel per day program, using all of the subsidies they recommend, could reach \$15 billion, using \$20 as the per barrel price of synfuels.

In the face of these conclusions, together with the obvious adverse impacts of synthetic fuels development, it is incomprehensible that the Congress, together with the Ford Administration, would willingly dedicate billions of taxpayers' dollars with the ultimate effect only of assisting the major energy companies to profit from otherwise uneconomic ventures.

The energy industry is asking the taxpayer to absorb the "risk" associated with the production of synthetic fuels, in other words, to insure that an obviously uneconomic venture is profitable. In an economic system where profits are usually the reward for

gauging and accepting risks and participating in competition, this request for tax moneys is extraordinary. These same companies are all too quick to resist controls and regulations which interfere with "free enterprise," such as price controls, or which would require responsible resource development, such as the vetoed federal strip mine bill.

WHAT IS H.R. 12112 DESIGNED TO TEST?

In designing any test or experiment, elementary scientific procedure dictates that it be determined at the outset which questions must be answered. Experiment design then proceeds to insure that the necessary answers, with sufficient accuracy, will result from the test.

We frankly are not sure at this point what questions H.R. 12112 is designed to answer. In evaluating the legislation and the testimony presented to this Committee, it is difficult to determine whether this guaranteed loan proposal is intended to provide answers to technical feasibility questions, environmental questions, social impact questions, economic feasibility questions, regulatory questions, all of these, some of these, or none of these. This confusion as to the purpose of the program is a critical point, for various possible goals would have entirely contradictory experimental designs. A program designed to test technology would be entirely different from a program designed to analyze regulatory processes. It is important to sort these questions out, because the types of information needed (if needed) for each type of question varies a great deal. For example, questions of technical feasibility relate to research and development, not commercialization. Yet some say that this "commercialization" program is designed to answer technical feasibility questions. As another example, questions of social impact relate to readily apparent phenomena in such towns as Gillette, Wyoming, Rock Springs, Wyoming, and Craig, Colorado. "Answers" to socio-economic impact "questions" would more properly be found by coping with the problems in the existing boom towns rather than creating new ones.

In scrutinizing testimony presented to this Committee by other witnesses, it is apparent that confusion about the purposes of H.R. 12112 is rather widespread. For example, Dr. Seamans of ERDA feels that H.R. 12112 is intended to address all the questions we named, without indicating which are more important than others:

"In my view the reason for this commercial synthetic program is to move out into a sufficiently large scale operation that we get into the real world problems of the environment, of socio-economic impact, of the resource requirements, the water requirements, the kinds of individuals required, the kinds of labor and the kind of engineering, that we get into the various regulatory aspects which are bound to occur in these different forms of energy."

Yet Governor Lamm of Colorado seems to be under the impression that it is the technical question about synfuels production and processing which are to be answered by H.R. 12112. Thus, he interprets the legislation, at least with respect to oil shale, as calling for "modules," rather than "commercial-scale" plants. Dr. Seamans, in turn, finds the "modular" approach unacceptable.

We raise the question of what H.R. 12112 intended to demonstrate, because we think that the explanation given thus far either misconstrues the nature of the legislation, or provide justifications for proceeding which are not borne out by the information available. Those who feel that the purpose for the guaranteed loan program is to demonstrate technical feasibility must be unaware of the rather extensive demonstrations world-wide

of the coal gasification and oil shale technologies; those who see the program as a means to demonstrate the "real-world" problems of boom towns and environmental degradation must be unaware of the extensive information and similar situations in this country on which we can base reasonable predictions of what the problems will be. None of us in the western states will be guinea pigs for projects with as many predictable adverse effects or oil shale and coal gasification projects which would be funded by H.R. 12112.

Normally we think about preserving environmental and community quality by minimizing predictable adverse effects, rather than forcing a project to proceed so that the adverse effects can be observed.

We agree that there may be some questions to be answered about synthetic fuels development. But the main one is economic—and a program designed to remove this development from the traditional constraints of free enterprise will hardly make an uneconomic project economic, except for the energy company beneficiary.

If ERDA is truly unaware of the "real-world" problems Dr. Seamans lists, then we would suggest that no community in this country be subjected to the large-scale experiments this bill is designed to finance. It would be grossly irresponsible to sponsor projects about which so little is known. On the other hand, if ERDA is aware of the copious amounts of information available on impacts, resource requirements, etc., then it is very cynical to justify this program on the basis of fabricated "reasons."

THE BAILOUT

We feel that we do understand why this subsidy program is being proposed: Several energy companies, including some of the largest energy corporations in the world, have invested their money in synthetic fuels technologies. They have recognized that commercial scale development cannot withstand the corporate and banker test of profitability, and each of these corporations has better places to spend their own money. Apparently, such stringent priority-setting does not apply to the spending of taxpayers' money.

The Congressional Budget Office agrees that the key barrier to commercialization is unprofitability:

"In summary unprofitability appears to be the major factor preventing private investment in synthetic fuel development."

We therefore must conclude that this subsidy program is not a sophisticated experiment formulated in the pursuit of knowledge; it is actually nothing more than a bailout for the corporations who would like to see their initial investments in synthetic fuel resources and technology pay off for them.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. GOODLING) to revise and extend their remarks and include extraneous matter:)

Mr. DON H. CLAUSEN, for 20 minutes, today.

Mr. WHALEN, for 30 minutes, today.
(The following Members (at the request of Mr. SHARP) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. GONZALEZ, for 5 minutes, today.
 Mr. LONG of Louisiana, for 5 minutes, today.
 Mr. STAGGERS, for 5 minutes, today.
 Mr. KOCH, for 10 minutes, today.
 Mr. MEZVINSKY, for 10 minutes, today.
 Mr. BROWN of California, for 5 minutes, today.
 Mr. HARKIN, for 5 minutes, today.
 Mr. WIRTH, for 5 minutes, today.
 Mr. MURTHA, for 30 minutes, on June 2, 1976.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. GOODLING), and to include extraneous matter:)

Mr. DICKINSON in two instances.
 Mr. WIGGINS.
 Mr. McCLODY.
 Mr. LENT in two instances.
 Mr. RUPPE.
 Mr. SKUBITZ in three instances.
 Mr. McCLOSKEY.
 Mr. WHITEHURST.

(The following Members (at the request of Mr. SHARP), and to include extraneous matter:)

Mr. WIRTH in two instances.
 Ms. HOLTZMAN in 10 instances.
 Mr. ANDERSON of California in three instances.
 Mr. TEAGUE.
 Mr. GONZALEZ in three instances.
 Mr. FASCELL.
 Mr. FITHIAN in two instances.
 Mr. CARNEY in two instances.
 Mr. BIAGGI in 10 instances.
 Mr. WOLFF.
 Mr. HARRINGTON.
 Mr. RANGEL.
 Mrs. KEYS.
 Mr. WAXMAN.
 Mr. PEPPER.
 Mr. HARRIS.
 Mr. OTTINGER.
 Mr. TRAXLER.
 Mr. MAGUIRE.
 Mr. LAFALCE.
 Mr. BALDUS.
 Mr. McDONALD of Georgia.
 Mr. BEARD of Rhode Island.
 Mr. MCCORMACK in two instances.
 Mr. JAMES V. STANTON.
 Ms. ABZUG.
 Mr. PERKINS.

BILLS PRESENTED TO THE PRESIDENT

Mr. HAYS of Ohio, from the Committee on House Administration, reported that that committee did on the following dates present to the President, for his approval, bills of the House of the following title:

On May 26, 1976:

H.R. 8719. An act to provide for an amendment to the Washington Metropolitan Area Transit Regulation Compact to provide for the protection of the patrons, personnel, and property of the Washington Metropolitan Area Transit Authority; and

H.R. 12453. An act to authorize appropriations to the National Aeronautics and Space

Administration for research and development, construction of facilities, and research and program management, and for other purposes.

On May 27, 1976:

H.R. 9630. An act to extend the Educational Broadcasting Facilities Program and to provide authority for the support of demonstrations in telecommunications technologies for the distribution of health, education, and public or social service information, and for other purposes.

ADJOURNMENT

Mr. SHARP. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 2 o'clock and 53 minutes p.m.), pursuant to the provisions of House Concurrent Resolution 648, 94th Congress, the House adjourned until Tuesday, June 1, 1976, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

3392. A letter from the Chairman, Cost Accounting Standards Board, transmitting a proposed cost accounting standard entitled "Part 414—Cost of Money as an Element of the Cost of Facilities Capital," pursuant to section 719(h) (3) of the Defense Production Act of 1950, as amended; to the Committee on Banking, Currency and Housing.

3393. A letter from the Mayor of the District of Columbia, transmitting his response to the Comptroller General's report on the renewal of the District's 14th Street Corridor, pursuant to section 736(b) (3) of Public Law 93-198; to the Committee on the District of Columbia.

3394. A letter from the Librarian of Congress, transmitting the annual report of the Library of Congress, including the Copyright Office and the Library of Congress Trust Fund Board, pursuant to sections 139 and 163 of title 2, United States Code; to the Committee on House Administration.

3395. A letter from the vice president for Government Affairs, National Railroad Passenger Corporation, transmitting the financial report of the Corporation for the month of February 1976, pursuant to section 308 (a) (1) of the Rail Passenger Service Act of 1970, as amended; to the Committee on Interstate and Foreign Commerce.

RECEIVED FROM THE COMPTROLLER GENERAL

3396. A letter from the Comptroller General of the United States, transmitting a report on the allocation of revenue sharing funds to Indian tribes and Alaskan Native villages; to the Committee on Government Operations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. MAHON: Committee on Appropriations. H.R. 13615. A bill to amend the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, and for other purposes; (Rept. No. 94-1152, Pt. II). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government

Operations. Supplemental report on H.R. 13367. A bill to extend and amend the State and Local Fiscal Assistance Act of 1972, and for other purposes; (Rept. No. 94-1165, Pt. II). Referred to the Committee of the Whole House on the State of the Union.

Mr. MAHON: Committee on Appropriations. H.R. 13367. A bill to extend and amend the State and Local Fiscal Assistance Act of 1972, and for other purposes; (Rept. No. 94-1165, Pt. III). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 3055. A bill to amend certain provisions of the Internal Revenue Code of 1954 relating to distilled spirits, and for other purposes; with amendment (Rept. No. 94-1200). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 8911. A bill to amend title XVI of the Social Security Act to make needed improvements in the program of supplemental security income benefits; with amendment (Rept. No. 94-1201). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. WIRTH:

H.R. 14046. A bill to regulate commerce to assure increased supplies of natural gas at reasonable prices for consumers, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. BRINKLEY (for himself, Mr.

YOUNG of Alaska, Mr. BONKER, Mr. HOWARD, Mr. MITCHELL of New York, Mr. DUNCAN of Tennessee, Mr. ALLEN, Mr. ULLMAN, Mrs. SPELLMAN, Mr. BEARD of Tennessee, and Mr. NICHOLS):

H.R. 14047. A bill to amend the Federal Civil Defense Act of 1950 to allow Federal civil defense funds to be used by local civil defense agencies for natural disaster relief, and for other purposes; to the Committee on Armed Services.

By Mr. BURKE of Massachusetts:

H.R. 14048. A bill to extend until July 1, 1979, the duty-free treatment on copying lathes used for making rough or finished shoe lasts; to the Committee on Ways and Means.

By Mr. COCHRAN:

H.R. 14049. A bill to amend title XVIII of the Social Security Act to permit optometrists to provide services that are covered under the medicare program and are within their license; to the Committee on Ways and Means.

By Mr. COHEN (for himself and Mr. GRASSLEY):

H.R. 14050. A bill to amend the Internal Revenue Code of 1954 to provide income tax incentives for the modification of certain facilities and vehicles so as to remove architectural and transportation barriers to the handicapped and elderly; to the Committee on Ways and Means.

By Mr. CORMAN (for himself, Mr. RANGEL, Mr. STARK, Mr. LEHMAN, Mr. LUNDINE, and Mr. BEDELL):

H.R. 14051. A bill to amend the Internal Revenue Code of 1954 to deny certain benefits to taxpayers who participate in or cooperate with the boycott of Israel; to the Committee on Ways and Means.

By Mr. COUGHLIN (for himself and Mr. SCHNEEBELI):

H.R. 14052. A bill to reaffirm the intent of Congress with respect to the structure of the common carrier telecommunications in-

dustly rendering services in interstate and foreign commerce; to grant additional authority to the Federal Communications Commission to authorize mergers of carriers when deemed to be in the public interest; to reaffirm the authority of the States to regulate terminal and station equipment used for telephone exchange service; to require the Federal Communications Commission to make certain findings in connection with Commission actions authorizing specialized carriers; and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. DENT (for himself, Mr. SCHEUER, and Mr. VIGORITO):

H.R. 14053. A bill to reaffirm the intent of Congress with respect to the structure of the common carrier telecommunications industry rendering services in interstate and foreign commerce; to grant additional authority to the Federal Communications Commission to authorize mergers of carriers when deemed to be in the public interest; to reaffirm the authority of the States to regulate terminal and station equipment used for telephone exchange service; to require the Federal Communications Commission to make certain findings in connection with Commission actions authorizing specialized carriers; and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. DOWNING (for Virginia):

H.R. 14054. A bill to extinguish Federal court jurisdiction over school attendance; to the Committee on the Judiciary.

By Mr. DRINAN (for himself, Ms. ABZUG, Ms. CHISHOLM, Mr. HARRINGTON, Mr. LAFALCE, Mr. METCALFE, Mr. MITCHELL of Maryland, Mr. ROYAL, Mr. SEIBERLING, Mr. STARK, Mr. WAXMAN, and Mr. WOLFF):

H.R. 14055. A bill to amend chapters 5 and 7 of title 5 of the United States Code to provide for the award of reasonable attorney fees, expert witness expenses, and other costs reasonably incurred in proceedings before Federal agencies, and for other purposes; to the Committee on the Judiciary.

By Mr. EVANS of Indiana:

H.R. 14056. A bill to amend title 39, United States Code, to require Members and Members-elect of the House of Representatives to provide that such Members and Members-elect may not make any mass mailings less than 60 days before a primary or general election; to the Committee on Post Office and Civil Service.

By Mr. FARY:

H.R. 14057. A bill to amend the Public Works and Economic Development Act of 1965 to extend the authorization for a 3-year period; to the Committee on Public Works and Transportation.

By Mr. FISH (for himself and Mr. RYAN):

H.R. 14058. A bill to terminate the granting of construction licenses of nuclear fission powerplants in the United States pending action by the Congress following a comprehensive 5-year study of the nuclear fuel cycle, with particular reference to its safety and environmental hazards, to be conducted by the Office of Technology Assessment, and for other purposes; to the Joint Committee on Atomic Energy.

By Mr. HARKIN:

H.R. 14059. A bill to amend sections 332 and 333 of the Consolidated Farm and Rural Development Act and section 504 of the Housing Act of 1949 to provide an appeal procedure for certain individuals denied assistance under those acts, and for other purposes; jointly, to the Committees on Agriculture, and Banking, Currency and Housing.

By Mr. HARRINGTON:

H.R. 14060. A bill to reaffirm the intent of Congress with respect to the structure of the common carrier telecommunications industry rendering services in interstate and foreign commerce; to grant additional authority to

the Federal Communications Commission to authorize mergers of carriers when deemed to be in the public interest; to reaffirm the authority of the States to regulate terminal and station equipment used for telephone exchange service; to require the Federal Communications Commission to make certain findings in connection with Commission actions authorizing specialized carriers; and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. HARRIS (for himself, Mr. NEAL, Ms. SPELLMAN, Mr. BRODHEAD, Mr. HANLEY, Mr. SIMON, Mr. MINETA, Mr. JENNETTE, Mr. CLAY, Mr. WHITE, Mr. FISHER, Mr. SOLAREZ, Mr. LEHMAN, and Ms. SCHROEDER):

H.R. 14061. A bill to amend title 5, United States Code, to increase the membership of the Civil Service Commission from three to five, and for other purposes; to the Committee on Post Office and Civil Service.

By Mrs. HECKLER of Massachusetts:

H.R. 14062. A bill to amend title 38, United States Code, to extend, in the case of certain veterans, the delimiting period for completing programs of education from 10 years to 12 years, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. JONES of Alabama:

H.R. 14063. A bill to amend the Atomic Energy Act of 1954 to require bonds from persons requesting hearings with respect to operating licenses; to the Joint Committee on Atomic Energy.

By Mr. KAZEN:

H.R. 14064. A bill to authorize the establishment of the San Antonio Missions National Historical Park in the State of Texas, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. KOCH (for himself and Mr. NEAL):

H.R. 14065. A bill to amend part B of title XVIII of the Social Security Act to broaden the coverage of home health services under the supplementary medical insurance program and remove the 100-visit limitation presently applicable thereto, and to eliminate the requirement that an individual need skilled nursing care in order to qualify for such services, to amend part A of such title to liberalize the coverage of posthospital home health services thereunder, to amend title XIX of such act to require the inclusion of home health services in a State's medical program and to permit payments of housing costs under such a program for elderly persons who would otherwise require nursing home care, to require contributions by adult children toward their parents' nursing and home health care expenses under the medical program, to provide expanded Federal funding for congregate housing for the displaced and the elderly, and for other purposes; jointly to the Committees on Ways and Means, and Interstate and Foreign Commerce.

By Mr. KOCH (for himself, Mr. ANDERSON of California, Mr. BIAGGI, Mr. BLOUIN, Mr. CARNEY, Mrs. CHISHOLM, Mrs. COLLINS of Illinois, Mr. DOWNEY of New York, Mr. FASCELL, Mr. FRASER, Mr. GILMAN, Mr. HARRINGTON, Mr. HOWARD, Mr. HYDE, Mr. LEHMAN, Mr. MATSUNAGA, Mr. RIEGLE, Mr. RODINO, Mr. ROE, Mr. ROONEY, Mr. TRAXLER, Mr. WAXMAN, Mr. CHARLES H. WILSON of California, Mr. YOUNG of Florida, and Mr. ZEFERETTI):

H.R. 14066. A bill to amend part B of title XVIII of the Social Security Act to broaden the coverage of home health services under the supplementary medical insurance program and remove the 100-visit limitation presently applicable thereto, and to eliminate the requirement that an individual need skilled nursing care in order to qualify for such services, to amend part A of such

title to liberalize the coverage of posthospital home health services thereunder, to amend title XIX of such act to require the inclusion of home health services in a State's medical program and to permit payments of housing costs under such a program for elderly persons who would otherwise require nursing home care, to require contributions by adult children toward their parents' nursing home and health care expenses under the medical program, to provide expanded Federal funding for congregate housing for the displaced and the elderly, and for other purposes; jointly to the Committees on Ways and Means, and Interstate and Foreign Commerce.

By Mr. MOAKLEY (for himself, Mr. BAUCUS, Mr. D'AMOURS, Mr. EDWARDS of California, Mr. GILMAN, Mr. HARRINGTON, Mr. HOWARD, Mr. JOHNSON of California, Mrs. MEYNER, Mrs. MINK, Mr. MITCHELL of New York, Mr. PATTERSON of California, Mr. REES, and Mr. WON PAT):

H.R. 14067. A bill to amend the Internal Revenue Code of 1954 to provide a tax credit and to allow a deduction with respect to expenditures for residential solar energy equipment; to the Committee on Ways and Means.

By Mr. MOSS:

H.R. 14068. A bill to create a comprehensive Federal system for determining the ownership of and amount of compensation to be paid for inventions made by employed persons; to the Committee on the Judiciary.

By Mr. MURPHY of New York (for himself, Mr. KRUEGER, Mr. BROWN of Ohio, Mr. ROONEY, Mr. DEVINE, Mr. SATERFIELD, Mr. BROYHILL, Mr. STUCKEY, Mr. SKUETZ, Mr. PREYER, Mr. COLLINS of Texas, Mr. METCALFE, Mr. FREY, Mr. BYRON, Mr. MCCOLLISTER, Mr. SANTINI, Mr. MADIGAN, Mr. MOORHEAD of California, and Mr. MOORE):

H.R. 14069. A bill to assure the availability of adequate supplies of natural gas; to the Committee on Interstate and Foreign Commerce.

By Mr. O'HARA (for himself, Mr. PERKINS, Mr. QUIE, Mr. ESHLEMAN, Mr. BRADENAS, Mr. BIAGGI, Mr. ANDREWS of North Carolina, Mr. BLOUIN, Mr. THOMPSON, Mr. MOTTI, Mr. HAWKINS, Mr. BENITEZ, Mr. SIMON, Mr. HALL, and Mr. BUCHANAN):

H.R. 14070. A bill to extend and amend part B of title IV of the Higher Education Act of 1965, and for other purposes; to the Committee on Education and Labor.

By Mr. ROONEY (for himself, Mr. PERKINS, Mr. PEPPER, Mr. CARTER, Mr. BRECKINRIDGE, Mr. THOMPSON, Mr. MAZZOLI, Mr. CHAPPELL, and Mr. SNYDER):

H.R. 14071. A bill to regulate interstate commerce with respect to parimutuel wagering on horseracing, to maintain the stability of the horseracing industry, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. RUPPE:

H.R. 14072. A bill to amend title XVIII of the Social Security Act to include prescription drugs, hearing aids and eyeglasses (and related examinations), and dentures among the items and services for which payment may be made under the supplementary medical insurance program; to the Committee on Ways and Means.

By Mr. ULLMAN:

H.R. 14073. A bill to amend the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476) and the act of June 4, 1897 (30 Stat. 35); to the Committee on Agriculture.

H.R. 14074. A bill to reaffirm the intent of Congress with respect to the structure of the common carrier telecommunications in-

dustry rendering services in interstate and foreign commerce; to reaffirm the authority of the States to regulate terminal and station equipment used for telephone exchange service; to require the Federal Communications Commission to make certain findings in connection with Commission actions authorizing specialized carriers; and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. WINN (for himself and Mr. WONG PAT):

H.J. Res. 968. Joint resolution authorizing and requesting the President to issue a proclamation designating the 7 calendar days commencing on April 30 of each year as National Beta Sigma Phi Week; to the Committee on Post Office and Civil Service.

By Mr. LAGOMARSINO:

H. Con. Res. 647. Concurrent resolution recognizing and providing for a Bicentennial Salute; to the Committee on Post Office and Civil Service.

By Mr. DOWNEY of New York:

H. Res. 1223. Resolution expressing the sense of the House concerning the closure or suspension or reduction of operations of post offices; to the Committee on Post Office and Civil Service.

By Mr. PIKE:

H. Res. 1224. Resolution to establish a Standing Committee on the House on Intelligence, and for other purposes; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. GRASSLEY introduced a bill (H.R. 14075) for the relief of Tulsedel Zalim, which was referred to the Committee on the Judiciary.

FACTUAL DESCRIPTIONS OF BILLS AND RESOLUTIONS INTRODUCED

Prepared by the Congressional Research Service pursuant to clause 5(d) of House rule X. Previous listing appeared in the CONGRESSIONAL RECORD of May 26, 1976, page 15540:

HOUSE BILLS

H.R. 13600. May 6, 1976. Veterans' Affairs. Changes the authority of the Administrator of Veterans' Affairs with regard to expenditures to correct structural defects in dwellings securing loans guaranteed or insured by the Administrator.

H.R. 13601. May 6, 1976. Interstate and Foreign Commerce. Amends the Rail Passenger Service Act to authorize appropriations to carry out the provisions of such Act. Authorizes the National Railroad Passenger Corporation to employ security guards. Places specified limitations on the awarding of incentive payment contracts under such Act. Exempts local public bodies which provide rail mass transportation services from the Interstate Commerce Act under specified conditions.

H.R. 13602. May 6, 1976. Judiciary. Prescribes penalties for the unauthorized disclosure of classified information. Enumerates defenses available to an individual charged with such offense, including: (1) prior official disclosure; (2) unlawful classification and the exhaustion of available declassification procedures; and (3) the absence of a process for reviewing the continuing necessity for the classification.

H.R. 13603. May 6, 1976. Science and Technology. Establishes a Federal Council on Earthquake Research, Prediction, and Control. Directs such council to develop a comprehensive plan and program of necessary Federal research on earthquakes and related natural occurrences. Lists specific projects

which must be included within the comprehensive plan and program.

Establishes a National Earthquake Prediction, Preparedness, and Coordination Council. Directs such Council to develop a comprehensive plan and program for earthquake prediction, preparedness, and coordination. Requires that such plan and program include specified projects, including an earthquake prediction system for areas of high seismic risk.

H.R. 13604. May 6, 1976. Interstate and Foreign Commerce. Reaffirms the intent of Congress with respect to the structure of the common carrier telecommunications industry rendering services in interstate and foreign commerce. Grants additional authority to the Federal Communications Commission to authorize mergers of carriers when deemed to be in the public interest. Reaffirms the authority of the States to regulate terminal and station equipment used for telephone exchange service. Requires the Federal Communications Commission to make specified findings in connection with Commission actions authorizing specialized carriers.

H.R. 13605. May 6, 1976. Judiciary. Establishes procedures for the application, approval, and extension of orders authorizing the use of electronic surveillance for foreign intelligence purposes. Permits the Attorney General to authorize emergency employment of such surveillance for 24 hours in the absence of a judicial order.

Requires the Chief Justice of the United States to designate seven district court judges to hear applications for, and grant orders approving, electronic surveillance within the United States.

H.R. 13606. May 6, 1976. Ways and Means. Amends the Tariff Act of 1930 to exempt private vessels and aircraft entering or departing the United States at night or on Sunday or a holiday from required payment to the United States for overtime services of customs officers and employees.

Prohibits imposition of any such charge upon the owner, operator, or agent of such private aircraft or vessel for the services of officers and employees of (1) the Immigration and Naturalization Service, (2) the Public Health Service, or (3) the Department of Agriculture.

H.R. 13607. May 6, 1976. Government Operations; Rules. Abolishes within three years of the enactment of this Act, or three years after they have been established, all Federal regulatory agencies unless the President and Congress determine that such agencies should continue to exist.

H.R. 13608. May 6, 1976. Armed Services. Makes it unlawful for any individual or entity to solicit or enroll any member of the Armed Forces in any labor organization or for any member of the Armed Forces to join, or encourage others to join, any labor organization. Sets forth penalties for violations of this Act.

H.R. 13609. May 6, 1976. Ways and Means. Amends the Internal Revenue Code to eliminate in the case of taxpayers over age 65 the one percent floor on the deduction for medicine and drugs, and the three percent floor on the deduction for medical expenses.

H.R. 13610. May 6, 1976. Ways and Means. Amends the Social Security Act to include, as a home health service in the Medicare program, nutritional counseling provided by or under the supervision of a registered dietitian.

H.R. 13611. May 6, 1976. Interstate and Foreign Commerce. Reaffirms the intent of Congress with respect to the structure of the common carrier telecommunications industry rendering services in interstate and foreign commerce. Grants additional authority to the Federal Communications Commission to authorize mergers of carriers when deemed to be in the public interest. Reaffirms the authority of the States to regulate

terminal and station equipment used for telephone exchange service. Requires the Federal Communications Commission to make specified findings in connection with Commission actions authorizing specialized carriers.

H.R. 13612. May 6, 1976. Government Operations; Rules. Establishes a pilot demonstration program of termination and review to cover all Federal agencies. Terminates specified agencies on specified dates and provides that such agencies may be reestablished for a period not to exceed six years only after Congress has conducted public hearings to evaluate such agency.

H.R. 13613. May 6, 1976. Agriculture. Establishes a food stamp program for the United States. Prohibits the distribution of Federal surplus foods in areas where a food stamp program is in operation.

Sets forth standards of eligibility for participation in such program.

Establishes the value of a food stamp allotment as the cost of an eligible household of a nutritionally adequate diet. Requires an eligible household to pay 27.5 percent of its income for its coupon allotment.

Promulgates requirements for State agencies conducting the State food stamp program.

Establishes criminal procedures for fraudulent activities connected with the program.

H.R. 13614. May 6, 1976. Banking, Currency and Housing. Increases the amount authorized to be appropriated under the Housing Act of 1959 for the loans for housing for the elderly and handicapped program.

H.R. 13615. May 6, 1976. Armed Services; Appropriations. Amends the Central Intelligence Agency Retirement Act of 1964 for Certain Employees to stipulate that any Act which expands the benefits under such retirement system is deemed to authorize appropriations to meet such increased costs. Revises the eligibility provision of such Act with respect to survivor's annuities for spouses and children. Increases the annuity payable from the Central Intelligence Agency Retirement and Disability Fund to annuitants and surviving spouses of annuitants which is based on a separation occurring prior to October 20, 1969.

H.R. 13616. May 6, 1976. Interstate and Foreign Commerce. Amends the Communications Act of 1934 to authorize the Federal Communications Commission to grant licenses and license renewals for five year terms.

Revises the Act to allow certain appeals from orders or decisions of the Commission to be brought in the United States court of appeals for the circuit in which the broadcast facility is, or is proposed to be, located.

Requires the Commission to examine its broadcast license renewal process to determine how the process can be simplified.

H.R. 13617. May 6, 1976. Post Office and Civil Service. Requires the United States Postal Service to hold a public hearing prior to closing any post office.

Lists factors which the Postal Service must consider and evaluate in making a determination with respect to any such closing.

H.R. 13618. May 6, 1976. Interior and Insular Affairs; International Relations. Amends the Trans-Alaska Pipeline Authorization Act and the Mineral Leasing Act of 1920 to direct the President to develop a plan for an equitable system of transportation, allocation, and distribution of Alaskan petroleum resources to all areas of the United States.

H.R. 13619. May 6, 1976. Ways and Means. Provides, under the Emergency Jobs and Unemployment Assistance Act of 1974, that an individual who performs services for an educational institution or agency shall not be eligible to receive Federal unemployment as-

sistance benefits during period between academic years or terms.

H.R. 13620. May 6, 1976. Ways and Means. Amends the Old-Age, Survivors, and Disability Insurance program of the Social Security Act to entitle widows and widowers who are under a disability to receive unreduced widow's and widower's benefits without regard to age.

H.R. 13621. May 6, 1976. Interstate and Foreign Commerce. Extends appropriations for emergency medical service systems under the Public Health Service Act. Authorizes the Secretary of Health, Education, and Welfare to conduct and support programs related to the treatment and rehabilitation of individuals injured by burns.

H.R. 13622. May 6, 1976. Government Operations. Amends the Budget and Accounting Act, 1921, to require that all departmental budget requests made to the Office of Management and Budget with respect to any fiscal year be submitted to the Congress along with the President's budget for such year. Requires officials requested by the appropriate committees of the Congress, to testify before such committees on the President's budget and on such departmental budget requests.

H.R. 13623. May 6, 1976. Education and

Labor. Provides for the establishment and operation of bilingual service, employment, and redevelopment centers to provide manpower training, job placement and development, counseling, remedial education, and other related services designed to assist disadvantaged Spanish-speaking persons who are unemployed or underemployed.

H.R. 13624. May 6, 1976. Education and Labor. Provides, under the Occupational Safety and Health Act of 1970, that whenever an employer's failure to comply with any provision of that Act or any State requirement relating to industrial safety causes or contributes to an accident resulting in bodily injury, no provision of any workers' compensation law or similar statute shall be construed to bar an action at law for contribution, indemnification, or other relief against the employer by a person alleged liable for such injury.

H.R. 13625. May 6, 1976. Ways and Means. Allows a tax credit, under the Internal Revenue Code, for a percentage of the expenses incurred by the taxpayer for employment training expenses of employees enrolled in apprenticeship programs or cooperative education programs or job-related programs of education.

H.R. 13626. May 6, 1976. Public Works and

Transportation. Amends the Federal Aviation Act of 1958 to authorize free or reduced rate transportation for handicapped persons and persons attending such individuals and for persons who are 65 years of age or older. Amends the Interstate Commerce Act to authorize free or reduced rate transportation by railroad for persons who are 65 years of age or older.

H.R. 13627. May 6, 1976. Judiciary. Directs the Secretary of the Treasury to pay a specified sum to certain individuals in full settlement of such individuals' claims against the United States arising from transferral of their dwelling to a dwelling owned by a certain non-profit housing corporation in expectation of certain relocation assistance.

H.R. 13628. May 6, 1976. Judiciary. Declares a certain individual eligible for naturalization under the Immigration and Nationality Act.

H.R. 13629. May 6, 1976. Judiciary. Declares a certain individual lawfully admitted to the United States for permanent residence, under the Immigration and Nationality Act.

H.R. 13630. May 7, 1976. Ways and Means. Amends the Social Security Act by including the services of optometrists under the medicare supplementary medical insurance program.

SENATE—Thursday, May 27, 1976

The Senate met at 11 a.m. and was called to order by Hon. JOHN C. CULVER, a Senator from the State of Iowa.

PRAYER

The Reverend Edgar J. Mundinger, pastor, Christ Lutheran Church of Washington, offered the following prayer:

In the name of the Father and of the Son and of the Holy Spirit. Amen.

Almighty God, all hearts are open to You and all desires known, and from You no secrets are hid. We come into Your presence dependent upon Your mercies. Have mercy upon us and upon these United States of America. We thank You for Your goodness to us as a deliberative body and praise You for the unceasing blessings You shower upon our land. We pray for divine guidance upon our individual and corporate efforts on behalf of our country and for the wholesome impact of our office here, at home, and in the world. Help us to think and plan and work together for the continued well-being of our Nation. Give us a steady sense of justice and fair dealing and a determination to seek the good of all of our citizens.

And because this day worshipers of the Lord Jesus Christ acclaim Him as King of Kings and Lord of Lords as He ascends to accept the rule over heaven and Earth, cause us all to acknowledge Thy divine sovereignty and to confess with confident faith: With God we shall do valiantly. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The assistant legislative clerk read the following letter:

CXXII—996—Part 13

U.S. SENATE,
PRESIDENT PRO TEMPORE,
WASHINGTON, D.C., May 27, 1976.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. JOHN C. CULVER, a Senator from the State of Iowa, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

Mr. CULVER thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, May 26, 1976, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Orders numbered 873, 874, and 875.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMUNICATIONS ACT AMENDMENTS—COMMON CARRIER TARIFF PROCEEDINGS

The Senate proceeded to consider the bill (S. 2054) to amend sections 203 and 204 of the Communications Act of 1934, which had been reported from the Committee on Commerce with amendments as follows:

On page 1, line 3, strike out "Section 203 (b) of the Communication Act of 1934 (47 U.S.C. 203(b)) is amended by deleting "thirty" and inserting in lieu thereof "ninety"; and insert "Section 203(b) of the Commu-

nications Act of 1934 (47 U.S.C. 203(b)) is amended to read as follows:

"(b) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after 90 days notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe; but the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified or modify the requirements made by or under authority of this section either in particular instances or by a general order applicable to special circumstances or conditions.".

On page 2, line 21, strike "nine" and insert "5";

On page 3, line 14, strike "The" and insert:

"At any hearing involving a charge increased, or sought to be increased, the burden of proof to show that the increased charge, or proposed increased charge, is just and reasonable shall be upon the carrier, and the;

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 203(b) of the Communications Act of 1934 (47 U.S.C. 203(b)) is amended to read as follows:

"(b) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after 90 days notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe; but the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified or modify the requirements made by or under authority of this section either in particular instances or by a general order applicable to special circumstances or conditions.".

SEC. 2. Section 204 of the Communications Act of 1934 (47 U.S.C. 204), is amended to read as follows:

"SEC. 204. (a) Whenever there is filed with the Commission any new or revised charge,

classification, regulation, or practice, the Commission may either upon complaint or upon its own initiative without complaint, upon reasonable notice, enter upon a hearing concerning the lawfulness thereof; and pending such hearing and the decision thereon the Commission, upon delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such charge, classification, regulation, or practice, in whole or in part but not for a longer period than 5 months beyond the time when it would otherwise go into effect; and after full hearing the Commission may make such order with reference thereto as would be proper in a proceeding initiated after such charge, classification, regulation, or practice had become effective. If the proceeding has not been concluded and an order made within the period of the suspension, the proposed new or revised charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed charge for a new service or an increased charge, the Commission may by order require the interested carrier or carriers to keep accurate account of all amounts received by reason of such charge for a new service or increased charge, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such charge for a new service or increased charges as by its decision shall be found not justified. At any hearing involving a charge increased, or sought to be increased, the burden of proof to show that the increased charge, or proposed increased charge, is just and reasonable shall be upon the carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

"(b) Notwithstanding the provisions of subsection (a) of this section, the Commission may allow part of a charge, classification, regulation, or practice, to go into effect, based upon a written showing by the carrier or carriers affected, and an opportunity for written comment thereon by affected persons, that such partial authorization is just, fair, and reasonable. Additionally, or in combination with a partial authorization, the Commission, upon a similar showing, may allow all or part of a charge, classification, regulation, or practice to go into effect on a temporary basis pending further order of the Commission. Authorizations of temporary new or increased charges may include an accounting order of the type provided for in subsection (a)."

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 94-918), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

SUMMARY AND PURPOSE OF LEGISLATION

S. 2054 was introduced July 8, 1975 by Senators Magnuson and Pearson at the request of the Federal Communications Commission (FCC).

As reported by the Committee, S. 2054 would:

(1) Amend section 203(b) of the Commu-

nications Act of 1934 to extend from 30 to 90 days the period of notice required before a new or revised common carrier tariff may become effective; and

(2) Amend section 204 of the Act:

(a) To extend from 3 to 5 months the period for which the Commission may suspend the effectiveness of new or revised tariff schedules;

(b) To authorize the Commission to conduct a preliminary written proceeding to determine whether a tariff filing should become effective or be suspended in whole or in part pending hearing and decision thereon; or whether temporary authorization of a tariff filing should be permitted; and

(c) To provide that accounting order procedures shall be applicable to tariff filings proposing charges for a new service, as well as increased charges for existing services.

NEED FOR LEGISLATION

Amendment of section 203(b)—Tariff notice period

Subsection 203(b) of the Communications Act presently provides that no change shall be made in common carrier tariff charges, classifications, regulations or practices which have been filed with the FCC except after 30 days notice to the Commission and the public. The Commission may, however, modify this notice requirement if particular circumstances so warrant.

In requesting this legislation, the FCC has submitted that the current 30-day notice period is inadequate for the agency to review a tariff filing fully and effectively. After compliance with the FCC's procedural rules, the existing 30-day notice period leaves the Commission with only 4 to 6 days, including weekends and holidays, to review the tariff filing, the submission of interested parties, and to reach a decision on whether or not to suspend the tariff.

In the Committee's judgment, the extension of the section 203(b) notice period from 30 to 90 days, as proposed by S. 2054, is essential for the FCC to meet its tariff review responsibilities consistent with the demands of due process. Given the complexity and detail of contemporary common carrier tariff filings, the existing 30-day notice period is unrealistic and no longer serves the public interest. Current tariff filings are often thousands of pages in length and may take up to 6 months for a carrier to prepare. Neither the Commission nor interested parties can be expected to review and analyze such filings within the constraints of the existing 30-day notice period.

As discussed below, S. 2054, as reported by the Committee, would authorize the FCC to conduct a preliminary written proceeding on a tariff filing and based thereon grant partial or temporary tariff changes pending full hearing on the lawfulness of the filing. Extension of the notice period to 90 days is also necessary for effective FCC utilization of this new authority as additional time will be required for the Commission to determine in the case of a particular tariff filing whether a temporary or partial change should be approved.

While judicial construction of existing subsection 203(b) has affirmed the Commission's authority to "modify" the notice requirement to 60 days in the case of tariff increases,² the Committee is of the view that the notice period should be established by statute for all tariff changes rather than left to agency discretion and litigation. As discussed below, the bill, as reported, would specifically provide that the authority of the Commission to modify the requirement

of section 203 does not include extending the notice period to more than 90 days.

Amendment of section 204

Tariff Suspension Period.—Section 204 of the Communications Act presently provides that the Commission, upon complaint or upon its own initiative, may designate a tariff filing for hearing on its lawfulness, and, pending such hearing, suspend the operation of the tariff for a period of not longer than 3 months beyond the time when it would otherwise go into effect. If the hearing process is not concluded at the end of the suspension period, the tariff becomes effective. Where an increased rate is at issue, the Commission may require a carrier to account for all funds received under the increase following the suspension period, and may order refunds with interest as may be appropriate upon conclusion of the hearing.

In requesting an extension of the suspension period, the FCC has submitted that it is impossible for it to conclude a tariff proceeding within the existing 3 month statutory limit. In this regard, the Commission has observed that section 204 was enacted in an era when regulated common carrier communications were less complex and the demands made upon the agency's hearing process were considerably lighter.

Under the Administrative Procedure Act (APA), the Commission is required to give notice (generally 30 days by administrative interpretation) of the time and place of the hearing. Following the close of hearings and prior to issuance of an initial decision, the APA requires that parties be given "reasonable opportunity" to file exceptions to proposed findings of facts and conclusions or "reasonable opportunity" to file exceptions to an initial decision. The Commission's procedural rules provide a 20-day period for the filing of proposed findings of fact and conclusions after the close of the hearing record. This 20-day period is generally inadequate and must be extended. The FCC rules also provide a 30-day period for the filing of exceptions to an initial decision, and this period is often extended at the request of the parties. Beyond these due process requirements, time is required for the Commission to hold the hearing itself and to prepare a reasoned decision which is subject to judicial review.

Given these time demands and procedural constraints, the Commission cannot realistically be expected to complete a tariff hearing within the existing 3-month statutory suspension period. As a result, most tariff filings, some involving revenue increases amounting to several hundred million dollars annually, go into effect before hearings on their lawfulness are concluded. In this regard, the imposition of an accounting and refund order is an imperfect protection against rate increases which may ultimately be held unlawful. Consumers lose the use of their money during the time such increased rates are in effect, and the accounting and refund procedures entail considerable expense and administrative burden to the carriers.

In addition, many tariff proceedings involve new or reduced rates where the issue presented is whether an unlawful discrimination or preference exists. The accounting and refund provisions, being applicable only in rate increase situations, afford no protection or remedy against new or reduced rates which are ultimately found to be unlawful but have become effective at the end of the suspension period before a decision can be reached. In such cases, users may have made substantial changes in their communications operations based on the new or reduced rate schedule, and may experience serious dislocations should the schedule be finally

Footnotes at end of article.

declared unlawful and hence void. An extension of the suspension period would enable the Commission to minimize these effects.

The Committee, for these reasons, believes that a longer suspension period is clearly justified as necessary for the Commission to keep pace with its regulatory responsibilities. As discussed below, however, the Committee is of the view that an extension of the suspension period to 5 months, rather than the 9 months requested by the FCC, is appropriate and has adopted an amendment to S. 2054 accordingly.

Partial or Temporary Tariff Approval.—Existing section 204 does not specifically authorize the Commission to separate questionable from legitimate aspects of a tariff filing prior to hearing and thus does not permit the Commission to suspend the former tariff elements and allow immediate implementation of the latter. The Commission is also without authority to permit a temporary tariff change. As a result, legitimate changes must await hearing on questionable aspects of the tariff and an unnecessary regulatory delay is created.

S. 2054 would amend section 204 to allow the Commission to make a preliminary judgment as to whether a tariff filing should become effective or be suspended in whole or in part pending hearing. In particular, new section 204(b) would enable the Commission to permit part of a tariff filing to go into effect based upon a written showing by the affected carrier or carriers, with opportunity for written comment by affected persons, that such partial authorization is just, fair, and reasonable. The new provisions would also enable the Commission, upon a similar written showing, to allow all or part of a tariff filing to become effective on a temporary basis subject to further Commission orders.

In the Committee's judgment, this new authority to approve temporary or partial tariff changes will provide the Commission with the flexibility needed to mitigate unnecessary effects of regulatory delay which presently attend the hearing and suspension process.² In this regard, the Committee notes that the Commission has stated its intention to reach decisions pursuant to this new authority within the extended 90-day notice period proposed by this legislation. The Committee fully expects the Commission to be able to do so.

Accounting and Refund Orders.—Existing section 204 authorizes the Commission to impose accounting and refund orders only in cases of tariffs involving increased charges. S. 2054 would amend section 204 to provide that the Commission may also issue accounting and refund orders in connection with tariffs involving charges for a new service.

Under the existing law, customers of a new service are unprotected against charges which become effective and are later found to be unlawfully excessive. The accounting and refund procedures should be available to the Commission to close this gap in remedy.

As amended by S. 2054, section 204 would authorize the FCC to impose accounting and refund orders in connection with new or increased charges which go into effect either pursuant to a temporary authorization or upon the expiration of a period of suspension.

COMMITTEE HEARINGS

Hearings on S. 2054 were held before the Subcommittee on Communications on September 17, 1975.

Testifying at the hearings were the Federal Communications Commission, MCI Telecommunications Corp., Continental Telephone Corp., United Telecommunications, Inc., and American Telephone and Telegraph Co. (AT&T).

Written submissions were also received from other common carriers and users of telecommunications services.

The Committee has fully considered all testimony and submissions in recommending enactment of the legislation here reported.

COMMITTEE AMENDMENTS

Length of extended suspension period

During the course of the hearings, the Committee received comments on S. 2054 from the Office of Telecommunications Policy (OTP) which endorsed extending the notice period from 30 to 90 days and providing the FCC with partial or temporary tariff approval authority, but opposed extension of the suspension period to 9 months as it would result in "regulatory lag."

At the suggestion of the Communications Subcommittee Chairman, the FCC and the OTP further discussed the legislation and by letters informed the Committee that a maximum suspension period of 5 months would meet earlier objections.³

The Committee believes that an extension of the section 204 suspension period from 3 to 5 months is appropriate and has adopted an amendment to S. 2054 accordingly.

In the Committee's judgment, such an extension strikes a necessary and reasonable balance between two competing considerations.

On the one hand, the carriers should not be subjected to inordinately long suspension periods which may deny them the timely implementation of increased charges made necessary by increased costs.

On the other hand, fairness to the rate-paying public and basic principles of administrative justice require that the regulatory agency be afforded a reasonable opportunity to pass upon increased charges and other tariff changes before they become effective. In view of the complexity of current tariff filings and the requirements of due process, as detailed above, the present 3-month substantial period is clearly an inadequate time frame for the Commission to make substantial progress, let alone conclude a tariff proceeding. Extending the suspension period to 5 months should remedy this procedural inadequacy.⁴

Although in many cases it has taken the Commission years, rather than months, to conclude its tariff proceedings, several administrative reforms may make 5 months a reasonable target period for completion of proceedings in the future. The Commission is in the process of streamlining its tariff hearing procedures and decision-making, as well as increasing staff assigned to major rate matters. The agency is also engaging in discussions with the principal carriers for the purpose of developing methods of obtaining service cost data more expeditiously.

The Committee emphasizes that a 2-month extension of the maximum suspension period should not result in unnecessary "regulatory lag" in view of the Commission's authority to approve justified partial or temporary tariff increases based upon an expedited written proceeding to be conducted during the 90-day notice period. The Committee believes that both the carriers and the rate-paying public will benefit from this procedure.

Maximum notice period

The Committee has adopted an amendment to S. 2054 which would provide that the 90-day notice period under section 203(b) may be shortened by the Commission where appropriate but may not be lengthened. This amendment reflects the Committee's judgment that a notice period of 90 days should be the maximum necessary for the Commission to complete its initial review of a tariff filing. In this regard, the Commission has indicated to the Committee that a full

90-day notice period will not be required in all cases, and that the maximum notice will be applied only where there is a compelling reason to do so.

This amendment would work no other change in existing law.

Burden of proof

As introduced and referred to the Committee, S. 2054 would have deleted the provision of existing section 204 which states that the burden of proof is on the carrier to prove the legitimacy of increased charges. In proposing this deletion, the FCC submitted that this provision is superfluous in view of section 556(d) of the subsequently-enacted Administrative Procedure Act which states that except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.

The Committee has adopted a technical amendment retaining the existing burden of proof provision in new section 203(a) for purposes of clarity, certainty, and convenience.

S. 2054, as reported, also contains certain technical conforming amendments which do not affect the substance of the legislation.

CONCLUSION

In the Committee's judgment, S. 2054, as reported, will provide the FCC with the flexibility needed to meet its regulatory responsibilities and to do equity to both carriers and the consumer public.

SECTION-BY-SECTION ANALYSIS

Section 1

Section 203(b) of the Communications Act of 1934 (47 U.S.C. 203(b)) is amended to extend from 30 to 90 days the period of notice required before a tariff may be changed, and to provide that the Commission may allow tariff changes upon less (but not more) than 90 days' notice.

Section 204 of the Act (47 U.S.C. 204) is in effect redesignated section 204(a) and is amended to extend from 3 to 5 months the period during which the Commission may suspend the operation of a tariff filing in whole or in part pending hearing on the lawfulness thereof. Other minor language changes in the subsection clarify that the provisions of the subsection are applicable to new, as well as revised, charges, classifications, regulations or practices. The accounting and refund order provisions of the subsection are made specifically applicable to charges for a new service, as well as increased charges. The subsection substantially retains the provision of existing section 204 which specifies that in any hearing involving an increased charge or proposed increase the burden of proof shall be upon the carrier to show that the increased charge or proposed increase is just and reasonable.

A new subsection 204(b) is added, providing that notwithstanding the provisions of subsection (a), the Commission may allow part of a charge, classification, regulation, or practice, to go into effect, based upon a written showing by the carrier or carriers affected, and an opportunity for written comment thereon by affected persons, that such partial authorization is just, fair, and reasonable. The new subsection (b) also provides that additionally, or in combination with a partial authorization, the Commission, upon a similar showing, may allow all or part of a charge, classification, regulation, or practice to go into effect on a temporary basis pending further order of the Commission. The subsection further provides that authorizations of temporary new or increased charges may include an accounting order of the type provided for in subsection (a).

COST ESTIMATE

In accordance with section 252(a) of the Legislative Reorganization Act of 1970, the

Committee estimates that no additional costs will accrue to the government as a consequence of the legislation. The Committee is not aware of any estimate by any government agency to the contrary.

FOOTNOTES

¹ FCC procedural rules provide that petitions for suspension of a tariff filing may be submitted as late as 14 days before the effective date of the tariff. (See 47 C.F.R. 1.773 (b)). The carrier filing the opposed tariff then has 3 days to the file or reply; however, this filing period is often extended to 8 to 10 days due to the complexity of the submissions and the bona fide need for additional time. (See 47 C.F.R. 1.4 (f) and (g) which permit additional time where short filing periods are involved.)

² *AT&T v. FCC*, 503 F.2d 612 (2d Cir. 1974).

³ The Committee notes that these new provisions substantially embody the recommendation of the Administrative Conference of the United States. See *Administrative Conference of the United States Annual Report* (1972), p. 64. Recommendation #724, Suspension and Negotiation of Rate Proposals by Federal Regulatory Agencies.

⁴ The letter from OTP, dated September 17, 1975, is included in the Agency Comments section of this report (*infra*).

⁵ The FCC and OTP letters, dated January 26, 1976 and March 22, 1976 respectively, are included in the Agency Comments section of this report (*infra*).

⁶ Other Federal regulatory agencies dealing with utilities or carriers have statutory suspension periods ranging from 5 to 7 months; Civil Aeronautics Board—6 months (49 U.S.C. 1482(g)); Federal Maritime Commission—3 months (46 U.S.C. 845); Federal Power Commission—5 months (15 U.S.C. 717c(e) (Power)); 16 U.S.C. 824d(e) (Natural Gas); Interstate Commerce Commission—7 months (49 U.S.C. 15(7)).

Three States (Hawaii, Kansas, Ohio) have indefinite suspension authority, while four States (Georgia, South Dakota, Wyoming, Texas) have no suspension power at all. The other States have suspension periods ranging from 90 days (Arkansas, Tennessee) to 12 months (Iowa, Virginia).

AGENCY COMMENTS

OFFICE OF

TELECOMMUNICATIONS POLICY,
EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, D.C., September 17, 1975.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Office of Telecommunications Policy on S. 2054, proposed legislation to amend Sections 203 and 204 of the Communications Act of 1934. This bill would:

(1) extend from thirty days to ninety days the period of notice required before a tariff may be changed;

(2) extend from three months to nine months the period during which the Federal Communications Commission may suspend new or revised tariff schedules;

(3) authorize the Commission to conduct preliminary written proceedings to determine whether a tariff filing should become effective in whole or in part pending a hearing and decision on the lawfulness thereof, or whether temporary authorization of a tariff filing should be permitted.

To summarize our position, we believe that statutory amendments to extend the notice period to ninety days and to enable the Commission to grant partial or temporary authorization of tariff changes are appropriate and desirable. However, we are skeptical, for the reasons discussed herein, about extending the statutory tariff suspension period from three months to nine months.

EXTENSION OF NOTICE PERIOD

Section 203(b) of the Communications Act presently prohibits carriers from making tariff changes except after thirty days notice to the Commission and the public. The same section provides that the Commission "may, in its discretion and for good cause shown, modify [the notice requirement] in particular instances or by a general order applicable to special circumstances or conditions."

In the past, the Commission has found that the thirty day notice period was insufficient in cases involving tariff increases. Such filings generally draw considerable opposition, and the Commission was unable within the thirty day period to review the tariff filing, together with the contentions of parties opposing it, and to reach a decision on whether or not to suspend it and order a hearing. The Commission therefore has modified its rules to require that all tariffs involving increased rates be filed on sixty days notice. 47 C.F.R. § 61.58 (1973). This modification was challenged shortly after its adoption on the sole ground that it was beyond the Commission's statutory authority as set forth in the above-quoted language. The court disagreed, however, noting that the authority to "modify" included the power to lengthen as well as shorten the notice period. *AT&T v. FCC*, 503 F.2d 612 (2d Cir. 1974).

The proposed legislation would extend the notice period to ninety days for all tariff changes. The Commission notes in its Explanation of Proposed Amendments introduced with the bill (121 Cong. Rec. 11965, daily ed. July 8, 1975) that such an extension is "particularly necessary to facilitate effective utilization of the Commission's power to authorize temporary or partial tariff changes," proposed in Section 2(b) of the bill. We agree. As we discuss later, we believe that the proposed authority to grant partial or temporary rate changes pending a full inquiry by the Commission is a necessary and appropriate measure, and that the Commission will need additional time to make the requisite determinations prior to authorizing a temporary or partial change.

We do note that there may be a question concerning the necessity of a statutory amendment to achieve this objective. In view of the judicial construction of the Commission's existing power to modify the notice period, it would appear that the Commission could extend the period to ninety days without new statutory authority, and that it could do so for all tariff changes, decreases as well as increases, assuming it could show "good cause" for lengthening the period. Nevertheless, given the previous challenge to the Commission's prior exercise of its authority to modify the notice period, it is advisable, on balance, to seek an explicit statutory change and thereby avoid protracted litigation.

SUSPENSION PERIOD

The Communications Act provides generally that tariff changes go into effect automatically at the end of the requisite notice period unless the Commission takes affirmative action to the contrary. Section 204 of the Act authorizes the Commission to designate a tariff filing for hearing and, pending completion of such hearing, to suspend the operation of the tariff for a period not longer than three months beyond the time when it would otherwise take effect. If the hearing process is not completed by the expiration of the suspension period, the tariff automatically takes effect, and, in the case of an increase in rates, the Commission may require a carrier to account for all funds received pursuant to the new tariff. Upon completion of the hearing, the Commission may order refunds with interest if the tariff, or a portion thereof, is found to be unlawful.

The Commission states in its "Explanation," *supra*, that it has been unable to con-

clude tariff hearings prior to the expiration of the present three month suspension period, and that a longer suspension time is therefore necessary. A longer suspension period, according to the Commission, will reduce the amount of time during which consumers are without the use of their money and simplify the accounting burden borne by the carriers.

In assessing the merits of the proposed legislation, it is appropriate to address the rationale behind the present suspension provisions of the Act. The statutory limit on the duration of a tariff suspension represents a Congressional recognition of the economic harm to carriers resultings from lost revenues during the time it takes a regulatory agency to decide the lawfulness of a tariff change. This has been recognized by the courts on numerous occasions. The Court of Appeals for the Second Circuit, for example, has pointed out that the statutory scheme "reflects the realization of Congress that when a carrier is prevented from placing in effect new rate increases it may suffer irreparable loss which in turn may impede the provision of adequate service during a period of rising costs." *American Telephone and Telegraph Co. v. FCC*, 487 F.2d 864 (2d Cir. 1973). Similarly, the Supreme Court, in discussing the limited suspension authority granted to the Federal Power Commission, stated:

"Business reality demands that natural gas companies should not be precluded by law from increasing the prices of their product whenever that is the economically necessary means of keeping the intake and outgo of their revenues in proper balance; otherwise procurement of the vast sums necessary for the maintenance and expansion of their systems through equity and debt financing would become most difficult, if not impossible." *United Gas Pipeline Co. v. Memphis Gas Division*, 358 U.S. 103, 113 (1968).

The Congress has also recognized, however, that when a new tariff goes into effect prior to a determination of its lawfulness, rate-payers should be made whole if the tariff is ultimately found unlawful. Thus, in *United States v. S.C.R.A.P.*, 412 U.S. 669 (1973), the Supreme Court noted in connection with the Interstate Commerce Commission's authority to suspend rate increases that:

"... Congress was aware that if the Commission did not act within the suspension period, then the new rates would automatically go into effect and the shippers would have to pay increased rates that might eventually be found unlawful. To mitigate this loss, Congress authorized the Commission to require the carriers to keep detailed accounts and eventually to repay the increased rates if found unlawful." 412 U.S. at 697.

The Act is thus an attempt to balance the interests between rate-payers and carriers with regard to tariff increases. We are sympathetic with this legislative proposal to lengthen the suspension period to nine months so as to reduce the amount of time during which rate-payers would be deprived of the use of their money. But we are mindful that the proposal would also increase the amount of time during which carriers would be precluded from receiving increased revenues under new rates. As a matter of equity in this regard, it is significant that even if the new rates were ultimately found lawful after completion of a hearing, the carrier would be unable to recover the revenues which it would have received but for the suspension, whereas customers have the benefits of the refund provisions if the rates are found unlawful.

The adverse effects of "regulator lag," i.e., the delay between the time when increased costs occur and the time when they can be reflected in higher tariffs, can be significant, particularly in an inflationary period. If a

carrier is prohibited for an extended period of time from instituting tariff increases to cover rising costs, its ability to attract capital, whether debt or equity, could be impaired, with a consequent and adverse impact on the provision of adequate service to its customers. The adverse effects of regulatory lag on the electric utilities, for example, was the genesis of the Administration's recent proposal to reform state regulatory processes by imposing a maximum limit of five months for rate and service proceedings. See White House Fact Sheet, p. 39, January 15, 1975.

The Commission has also stated that a longer suspension period is needed for situations involving tariffs for new services or reduced rates, in which case the accounting and refund provisions of § 204 are not applicable. The Commission notes that customers may make major changes in their operations based on the availability of rate schedules ultimately found to be unduly preferential or discriminatory, and that an order directing cancellation of the unlawful rate schedule would cause serious dislocations. The proposed nine month suspension period would, in the Commission's view, minimize this problem.

Tariffs for reduced rates or new services have often been the result of competitive pressures on the established carriers in various communications submarkets. It has been recognized that long delays in the implementation of tariffs for new services and lower rates can also have an adverse impact on carriers. As the Court states in *AT&T v. FCC*, *supra*, "the loss sustained when an agency delays a rate reduction can be equally as damaging, for during the delay customers may turn elsewhere and be permanently lost to the carrier." 487 F. 2d, *supra*, at n. 18.

On the other hand, if such a tariff were ultimately found unlawful, customers who might encounter "dislocations" as a result of an order directing cancellation of the rate or service would have no remedy comparable to the refund provisions available in the case of an unlawful increase. Similarly, no remedy would be available to competitors of the carrier who may have suffered a loss of customers who were attracted to the carrier's new services or lower rates. In view of these considerations, lengthening the suspension period for only those tariff changes involving new services or reduced rates may be an acceptable alternative.

In any event, we believe that there should be an increased emphasis on completing tariff proceedings as expeditiously as possible. In this regard, we note that the Commission, in its "Explanation" accompanying the bill, states that "improvements in procedures, together with expanded staff assigned to rate matters should shorten the time between tariff filing and decisions in hearing cases." In addition, the Commission refers to discussions it has had with carriers regarding the development of more expeditious methods of obtaining cost information relating to the various services. We applaud these measures and would encourage the Commission to pursue these and similar steps designed to expedite the tariff investigative process.

PARTIAL AND TEMPORARY RATE INCREASES

The proposed legislation would also amend § 204 to permit the Commission to authorize temporary or partial tariff changes. This change is generally consistent with the 1972 recommendation of the Administrative Conference that regulatory statutes should be amended, to the extent that existing authority is lacking, to authorize temporary and partial rate increases.

We believe that statutory authority to grant partial increases, as an adjunct to authority to suspend a proposed increase in full or allow it to go into effect without suspension, would mitigate somewhat the adverse effects of "regulatory lag" on carriers.

Such authority is particularly appropriate given that, in many cases, an ultimate determination of the unlawfulness of a tariff increase goes to only part of the increase, rather than the entire tariff change.

We do note, that the language of the proposed amendment is somewhat unclear. The report of the Administrative Conference states that temporary increases should be authorized "only when the agency makes a preliminary judgment, on the basis of a written showing by the regulated company and an opportunity for comment thereon by affected persons, that a proposed increase is justifiable at least in part." (See Report of the Administrative Conference of the United States for 1971-72 at p. 86, emphasis added.) The language of the proposed amendment differs from this recommendation, in certain respects. The amendment, for example, eliminates the "preliminary judgment" aspects of the Administrative Conference recommendation, and the proposed standard of "just, fair, and reasonable" is somewhat ambiguous. We suggest that a more precise standard be developed, lest the deliberations regarding a partial or temporary authorization become as protracted as an overall rate inquiry.

The Office of Management and Budget advises that it has no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JOHN EGER,
Acting Director.

FEDERAL COMMUNICATIONS
COMMISSION,
Washington, D.C., January 25, 1976.

HON. JOHN O. PASTORE,
Chairman, Subcommittee on Communications,
Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for the opportunity to comment upon the letter submitted by the Office of Telecommunications Policy concerning S. 2054, a bill to amend sections 203 and 204 of the Communications Act of 1934.

Essentially, OTP supports as appropriate and desirable the provisions of S. 2054 to extend the notice period to ninety days and to enable the Commission to grant partial or temporary authorizations of tariffs. It expressed concern, however, that the proposed nine-month suspension period is too long and might result in greater regulatory delay than presently exists.

The period of nine months was chosen because it was felt that during such a period the Commission could realistically come to a conclusion on the lawfulness of a tariff. However, as I testified, there is nothing sacred about the period of nine months.

We have discussed this matter with OTP. While the Commission would prefer the nine-month suspension period. We believe an extension of the present three-month period to five months would be helpful and in the public interest. I understand OTP agrees that the five-month period would meet their earlier objections.

I trust that, with such change, you will be in a position to move promptly in enacting S. 2054.

If further information is needed, I would welcome the opportunity to provide it.

Sincerely,

RICHARD E. WILEY,
Chairman.

OFFICE OF TELECOMMUNICATIONS
POLICY EXECUTIVE
OFFICE OF THE PRESIDENT,
Washington, D.C., March 22, 1976.

HON. JOHN O. PASTORE,
Chairman, Subcommittee on Communications,
Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I am advised that Chairman Wiley of the Federal Communica-

tions Commission has informed you of discussions between his staff and this Office regarding the objections to S. 2054, a bill to amend Sections 203 and 204 of the Communications Act of 1934, set forth in my September 17, 1975 letter to Senator Magnuson. Briefly stated, those objections centered around the proposed extension of the tariff suspension period to nine months and the consequent adverse effects of lengthening the delay between the time when increased costs occur and the time when they can be reflected in higher tariffs.

For reasons I stated in my letter to Senator Magnuson, the adverse impact of such "regulatory lag" on the financial structure of a carrier can be significant, and can result ultimately in inadequate service to the public. We are still not convinced that the present three month suspension period is inadequate in cases of proposed tariff increases. However, we do believe that the adverse effects of the extended delay originally suggested by the FCC would be reduced significantly by limiting the proposed extension of the suspension period to five months.

Accordingly, the Office of Telecommunications Policy would not object to an extension of the suspension period of Section 204 of the Act to five months. The Office of Management and Budget has no objection to the submission of this letter.

Sincerely,

JOHN EGER,
Acting Director.

FEDERAL COMMUNICATIONS
COMMISSION,
Washington, D.C., May 11, 1976.

HON. JOHN O. PASTORE,
Chairman, Subcommittee on Communications,
Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This refers to your request for the Commission's views on a proposed Committee amendment to S. 2054 which, in extending the notice period from 30 days to 90 days, makes clear that the Commission may allow changes in tariffs on less than 90 days notice but not more than 90 days notice. This clarification is consistent with the Commission's intent in seeking the 90-day notice period and we support the Committee's amendment.

Thank you for the opportunity to present our views.

Sincerely,

RICHARD E. WILEY,
Chairman.

COMMUNICATIONS ACT AMENDMENT—TRANSLATOR BROADCAST STATION OPERATIONS

The bill (S. 2847) to amend section 318 of the Communications Act of 1934, as amended, to enable the Federal Communications Commission to authorize translator broadcast stations to originate limited amounts of local programming, and to authorize frequency modulation—FM—radio translator stations to operate unattended in the same manner as is now permitted for television broadcast translator stations, was considered, ordered to be engrossed for a third reading, read the third time, and passed as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That clause (3) of the first proviso of section 318 of the Communications Act of 1934 (47 U.S.C. 318) is amended—

- (1) by striking out "solely" and inserting in lieu thereof "primarily"; and
- (2) by striking out "television".

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent to have

printed in the RECORD an excerpt from the report (No. 94-919), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

SUMMARY AND PURPOSE OF THE LEGISLATION

S. 2847 was introduced January 19, 1976 by Senators Magnuson and Pearson by request of the Federal Communications Commission (FCC).

Section 318 of the Communications Act of 1934 presently requires a licensed operator for all broadcast stations except those "engaged solely in the function of rebroadcasting the signals of television broadcast stations" (clause (3) of the first proviso). This provision excepts television broadcast translators—both VHF and UHF—from the licensed operator requirement provided no material is originated on the translator.

S. 247 would amend section 318 by deleting the word "television" from the above-quoted clause, thereby allowing the FCC to authorize unattended FM broadcast translator operation in the same manner now permitted for television broadcast translators.

S. 2847 would also amend section 318 by deleting the word "solely" from the above-quoted clause and substituting the word "primarily" thereby enabling the FCC to authorize translator broadcast stations to originate limited amounts of local programming.

BACKGROUND AND NEED FOR LEGISLATION

Translator stations are low-power broadcasting stations which receive the incoming signals of a television or FM radio station, amplify the incoming signals, convert—or "translate"—them to a different output frequency, and retransmit the signals to the community or area to be served. Translators have been utilized in areas of the country where, because of terrain or extreme distances, it is not possible to receive the signals of originating television or FM radio stations directly off-the-air. They have developed as a simple and relatively inexpensive means of making broadcast service available to small, sparsely populated communities where demand for television and FM radio is great and financial resources are meager. In such areas, translators often provide local residents with their only source of television or FM radio reception. The following table indicates the distribution of translators operating in the United States:

| | UHF television translators | VHF television translators | FM translators |
|----------------------|----------------------------------|----------------------------------|-------------------|
| Alabama | 5 | 0 | 0 |
| Alaska | 4 | 125 | 1 |
| Arizona | 53 | 80 | 5 |
| Arkansas | 4 | 3 | — |
| California | 103 | 155 | 14 |
| Colorado | 76 | 296 | 21 |
| Connecticut | 4 | 0 | 1 |
| Delaware | 0 | 0 | — |
| District of Columbia | 0 | 0 | — |
| Florida | 10 | 0 | — |
| Georgia | 10 | 0 | 1 |
| Hawaii | 20 | 4 | 2 |
| Idaho | 25 | 92 | 8 |
| Illinois | 4 | 1 | — |
| Indiana | 2 | 0 | — |
| Iowa | 23 | 6 | 3 |
| Kansas | 9 | 24 | 2 |
| Kentucky | 5 | 25 | — |
| Louisiana | 0 | 2 | — |
| Maine | 2 | 9 | — |
| Maryland | 2 | 12 | 3 |
| Massachusetts | 0 | 1 | — |
| Michigan | 14 | 8 | — |
| Minnesota | 62 | 11 | 4 |
| Mississippi | 1 | 2 | — |
| Missouri | 9 | 8 | — |
| Montana | 32 | 263 | 13 |
| Nebraska | 27 | 46 | 1 |
| Nevada | 2 | 10 | 8 |
| New Hampshire | 2 | 4 | — |
| New Jersey | 0 | 0 | — |
| New Mexico | 59 | 125 | 1 |

| | UHF television translators | VHF television translators | FM translators |
|----------------|----------------------------------|----------------------------------|-------------------|
| New York | 81 | 17 | — |
| North Carolina | 6 | 47 | — |
| North Dakota | 1 | 36 | — |
| Ohio | 3 | 0 | — |
| Oklahoma | 14 | 11 | — |
| Oregon | 88 | 146 | 4 |
| Pennsylvania | 39 | 7 | 1 |
| Rhode Island | 1 | 0 | — |
| South Carolina | 1 | 5 | — |
| South Dakota | 7 | 40 | — |
| Tennessee | 2 | 12 | — |
| Texas | 80 | 30 | — |
| Utah | 63 | 245 | 52 |
| Vermont | 6 | 3 | — |
| Virginia | 40 | 7 | 4 |
| Washington | 56 | 158 | 9 |
| West Virginia | 8 | 2 | 1 |
| Wisconsin | 7 | 0 | 6 |
| Wyoming | 15 | 138 | 15 |
| Total | 1,149 | 2,325 | 184 |
| Puerto Rico | 6 | 6 | — |
| Guam | 4 | — | — |
| Virgin Islands | 1 | — | — |
| Canal Zone | 0 | — | — |

Translator operations have been financed in various ways. Primary broadcast stations have constructed translators to expand the coverage of their signals. In some instances, appliance dealers, hoping to create a market for television sets, sponsored or substantially contributed to the construction of translator stations. In most cases, however, the installations are cooperatively financed. Contributions are solicited throughout the community or memberships may be sold in a television or FM radio club in order to finance the facility. In this regard, several State legislatures have enacted laws to assist in financing television translator operation and maintenance.¹ Direct community support is usually needed because the vast majority of translators do not generate revenue from their operations.

Unattended FM translator operation

To assist in making translators economically viable, Congress in 1960 amended section 318 of the Communications Act of 1934 to enable the FCC to permit television translator stations to operate without a licensed operator.² So amended, section 318 precludes Commission waiver or modification of the operator requirement for "stations engaged in broadcasting (other than those engaged solely in the function of rebroadcasting the signals of television broadcast stations)" * * * (Language of the 1960 amendment in *italics*.)

At the time this amendment was enacted, the only translator facilities in operation were those which rebroadcast the signals of television broadcasting stations. As a result of technological advancements over the past decade, FM radio translator stations have become feasible, and in 1970 the FCC modified its rules to authorize their construction and operation.³

In adopting the FM translator rules, the FCC stated:

"Section 318 of the Communications Act requires that the operation of every broadcast station, with the specific exception of television broadcast stations engaged solely in rebroadcasting, be placed in charge of a licensed operator. The Commission cannot, of course, waive this statutory requirement, although we are now preparing a proposal

¹ E.G., Idaho Code, secs. 31-4101 through 31-4121 (1969); Montana Revised Code, (secs. 70-401 through 70-425 (1947); and Utah Code Annotated, sec. 11-2-2 (1953).

² Public Law 86-609, approved July 7, 1960, 74 Stat. 363; see S. Rep. No. 980, 86th Cong., 1st sess., to accompany S. 1886, Sept. 4 (legislative day, Aug. 31), 1959 (Committee on Interstate and Foreign Commerce).

³ FCC Docket No. 17159, 35 Fed. Reg. 15388, 20 R.R. 2d 1538 (Oct. 1970).

for submission to Congress to amend the statute to allow a similar exception for FM translators. Until Congress changes the law, a licensed radio-telephone operator is required."

S. 2847 would extend the exception for unattended television translator operation to FM translators. Technical developments now enable FM translators to operate free of interference to other radio services without a licensed operator on duty. The Committee believes that section 318 should reflect this advanced technology by excepting FM translators from the licensed operator requirement. In the Committee's judgment, this action is necessary to make FM translator service economically viable in underserved and sparsely populated areas of the country. Given the existing exception for unattended television translator operation, the Committee perceives no reason for refusing to extend this exception to FM translators.

Limited local origination

The FCC has construed section 318 as limiting translators to rebroadcasting the signals of primary television and FM stations without any significant alteration of the characteristics of the incoming signals. In a 1968 rulemaking proceeding, the Commission interpreted section 318 to allow UHF translators to originate 20 seconds of commercial advertising per hour, limited to slide announcements,⁴ and in 1975 this permissible commercial origination was expanded to 30 seconds per hour.⁵ No program origination whatsoever has been allowed.

The FCC has stated that as a result of the above construction of section 318, translator stations are not self-supporting and must depend on public generosity to sustain their operations. The Commission has also noted that the prohibition on program origination in many instances deprives those people dependent on translator service of their only potential source of local programming, such as emergency alerts and coverage of local political and other news events. The FCC has therefore requested this legislation to allow the Commission to authorize limited amounts of local origination by translator stations. S. 2847 would accomplish this result by substituting the word "primarily" for "solely" in clause (3) of the first proviso of section 318.

In requesting this legislation, the FCC has suggested that specific limitations on the amount of local origination to be permitted could be best determined in a Commission rulemaking proceeding to implement the proposed section 318 amendments. The Commission has further stated that in deciding upon such limitations it would be bound by the section 318 requirement that origination be limited to the extent necessary to insure that translators retain their primary characteristic as rebroadcast stations.

The Committee believes that the public interest in the larger and more effective use of radio and television would be well-served by enabling the FCC to authorize translator stations to originate limited amounts of local program and commercial material. As noted, in many areas of the country translators provide the only access to satisfactory television and FM service. At present, however, such service consists solely of the programming of the distant station retransmitted by the translator. Allowing limited origination by translators would give their audiences access to local news and information of vital community interest, as well as enable translators to meet the difficult problems of financial support for their operation and service.

The Committee is of the view that specific

⁴ FCC Docket No. 17159, par. 12.

⁵ FCC Docket No. 15971, 13 FCC 2d 305 (1968).

⁶ FCC Docket No. 19661, 54 FCC 2d 421 (1975).

limitations on the amount and nature of local origination to be allowed, as well as any attending technical or other requirements, should be determined by the Commission in a rulemaking proceeding to implement the legislation. Such a proceeding will afford all interested parties an opportunity to comment on the specific limitations to be imposed.

While the Committee would leave detailed implementation of this legislation to the expertise and discretion of the administrative agency, it is emphasized that the allowed origination must be so limited as to maintain the primary rebroadcasting function of translator stations. In this regard, the FCC has previously conditioned the use of translators so to permit them to perform their supplementary function without impairing or burdening the maintenance and development of the regular television and radio services which provide the public with benefits beyond the capacity of translators. The FCC is also under an existing mandate to insure that translators operate on their assigned frequencies so as not to cause objectionable interference with other telecommunications services using the broadcast spectrum. The Committee expects that the FCC will continue to adhere to these principles in implementing this legislation.

HEARINGS

Hearings on S. 2847 were held before the Subcommittee on Communications on January 21, 1976. Testifying in support of the legislation were the Chairman of the Federal Communications Commission and counsel for the National Translator Association.

Subsequent to the hearings, statements were received from the National Cable Television Association, the Association of Maximum Service Telecasters, Inc., the National Association of Broadcasters, and Mr. Bill Sims, President of Wycom Corp., Laramie, Wyoming.

The Committee has fully considered all testimony and submissions in recommending enactment of the legislation here reported.

CONCLUSION

Translator broadcast stations have provided an invaluable service to those areas of the nation which would otherwise be without adequate access to radio and television reception.

The amendment to the Communications Act proposed by S. 2847 will enable translators to enhance this essential service consistent with their primary rebroadcasting function.

SECTION ANALYSIS

Section 318 is amended by deleting the word "solely" in clause (3) of the first proviso and inserting in lieu thereof "primarily", thereby enabling the FCC to authorize translator broadcast stations to originate limited amounts of local programming.

Section 318 is also amended by striking out the word "television" in clause (3) of the first proviso, thereby allowing the FCC to authorize unattended FM broadcast translator operation in the same manner presently permitted for television broadcast translators.

ESTIMATED COSTS

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510, 91st Congress), the Committee estimates that no additional costs will accrue to the government as a consequence of this legislation. The Committee is not aware of any cost estimate to the contrary.

BILL PASSED OVER

The bill (S. 2343) to amend the Communication Act of 1934, as amended, with respect to penalties and forfeitures, was announced as next in order.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that action on Calendar Order No. 875 not occur at this time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the Senator from Michigan seek recognition?

Mr. GRIFFIN. No, Mr. President.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NATIONAL SCIENCE FOUNDATION APPROPRIATIONS AUTHORIZATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 846.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

Calendar No. 846, H.R. 12566, authorizing appropriations to the National Science Foundation for fiscal year 1977.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the bill.

There being no objection, the Senate proceeded to consider the bill.

The bill was considered, ordered to a third reading, and read the third time.

Mr. KENNEDY. Mr. President, the authorization for the National Science Foundation which the Senate has before it today provides \$832.4 million for the Foundation's programs in fiscal year 1977. As Chairman of the Special Subcommittee on the NSF, and on behalf of Senator PELL and Senator MONDALE who joined as cosponsors of S. 3202, I recommend its passage by the Senate.

Included in this authorization is a 19.5 percent increase over the fiscal year 1976 level in support for basic research. I am pleased that the committee has approved the full increase requested by the administration, and included in S. 3202, for the conduct of this aspect of the Foundation's mission.

I want to call to the particular attention of the Senate the serious concerns which were raised before the subcommittee over the steadily downward trend in Federal funding of basic research which has marked the last decade. Since 1968, for example, support for basic research has fallen by 23 percent—when measured in constant dollars. It is disturbing to note, moreover, that the increase we have recommended in the NSF budget for basic research, has not been matched by corresponding increments at the other research supporting agencies. The Department of Health, Education,

and Welfare, for example, when proper account is taken of a \$71 million supplemental appropriation to the fiscal year 1976 budget, will actually suffer a decrease in fiscal year 1977, in constant dollars, of 9 percent in the availability of support of basic research. The net result is that the administration request for the overall support of basic research represents, in constant dollars, a net increase of only 1 percent.

Mr. President, our recommendation that the 19.5-percent increase in NSF-supported basic research be approved reflects the important role which basic research plays in furthering the Nation's economic and social goals. Eighty-seven percent of the NSF program is performed by colleges and universities. This support is a major determinant of the strength of the U.S. basic research effort and is the key to the effectiveness of the college and university system in expanding the frontiers of scientific knowledge. More than 1,300 academic and nonprofit institutions participate in NSF research and science education programs in all 50 States and the District of Columbia. In addition, a growing number of small R. & D. and other industrial firms are taking part in the Foundation's applied research programs, giving a new dimension to NSF research support activities.

In fiscal year 1975, for example, about 18,000 principal investigators—outstanding scientists and science educators—carried out Foundation supported programs with the assistance of more than 12,000 graduate students and technicians. During that period, over 1,650 graduate students held NSF fellowships and these young men and women selected 164 different institutions to pursue their education in science and engineering.

In addition to the funds provided in S. 3202 for basic research, the bill provides funds for the continuation of ongoing NSF programs and additional increases and new initiatives in areas relating to national and international needs and resources.

In the area of science education, for example, which has declined from 25 percent of the Foundation's budget in 1968 to just 7 percent in the fiscal year 1977 administration's budget request, S. 3202 provides important additional funding—\$80.2 million plus \$10 million in funds deferred from fiscal year 1975, and authorizes a number of potentially promising new programs.

S. 3202 increases from \$300,000 to \$3 million the authorization for the new science for citizens program. This effort will be directed to, first, improving public understanding of public policy issues involving science and technology; second, facilitating the participation of experienced scientists and engineers, as well as graduate and undergraduate students, in public activities aimed at the resolution of public policy issues having significant scientific and technical aspects; and third, enabling groups serving important public purposes, including citizen and public interest groups, to acquire necessary technical expertise to assist them in dealing with the scientific and technical aspects of public policy issues.

S. 3202 also establishes a new program for continuing education for scientists and engineers; \$1 million is authorized for efforts to enable scientists and engineers to make more valuable contributions to the Nation. The program includes the development of special curricula and educational techniques, as well as funds for fellowships. It builds on the limited program in this area currently supported by the Foundation, and is targeted on experienced scientists and engineers who have been engaged in their careers for at least 5 years. It is designed to enable them to bring their knowledge up to date and to prepare for new careers in concert with changes in national priorities.

Mr. President, additional funding is also provided for efforts to improve the participation of minorities, women and the handicapped in science and engineering and to encourage their employment at the Foundation. Women comprise only 5 percent of the persons employed in the United States in science and engineering; minorities only 4 percent. The handicapped, for which no comprehensive data has yet been developed, also appear to face serious problems of underemployment, and far too many, despite interest, attitude, and ability, have never become part of the potential pool of scientists and engineers. S. 3202 will provide funds to address the problems inherent in the under-representation of these groups in science and engineering and to insure that the Nation does not overlook the potential contribution they can make to scientific and technological development.

S. 3202 also authorizes \$2,000,000 for planning grants for the establishment of minority centers for graduate education in science and engineering. This new program will expand the options of the minority community in science and engineering. It will go beyond the NSF's existing minority institutions improvement program, by providing opportunities for research in universities with graduate students and postdoctoral research associates. The centers will also expose the minority community to the latest and most sophisticated science and technology. They will serve as a source of highly trained scientists and engineers for local schools. Faculty members will serve as role models for aspiring young minority students. Expressions of support for this new program have come from educators and researchers from across the country.

S. 3202 also includes the full \$5.5 million requested by the administration for instructional improvement and elementary and secondary school materials development, testing, and evaluation. Special emphasis will be placed on the support of activities to improve the general level of scientific literacy and to increase the ability of students to make use of the methods of science and the results of scientific discovery. The committee received close to 200 letters in support of the NSF's precollege programs and witnesses during the Senate hearings, including the National High School Science Teachers Association, strongly endorsed approval of these funds.

A new emphasis on international scientific research, education, and policy anal-

ysis is also provided in S. 3202. This effort will insure that U.S. science and technology makes the fullest contribution to research problems which cross national boundaries. It will focus on the alleviation of problems in the developing world that result from scientific and technical needs related to food, nutrition, and agriculture.

There will also be a new emphasis in fiscal year 1977 on interdisciplinary research through undergraduate programs, research projects which provide for apprenticeship training, fellowship programs, and arrangements for degree training, including postgraduate degrees in more than one discipline, in institutions of higher education.

Mr. President, important incentives are also provided in S. 3202 for full participation by small business in NSF supported programs. Ten percent of applied research funds is set aside for small businesses. NSF is also directed to establish an Office of Small Business Research and Development to monitor all awards made to small businesses and to insure that the 10-percent set-aside is fully and effectively utilized. The Office will collect and disseminate information concerning grants awarded to small business, analyze the scientific and technical expertise which exists in the small business community, assist individual small companies in obtaining information regarding the procedures and programs of the Foundation, and recommend such changes in procedures to the Director of the Foundation and the National Science Board as may be appropriate to meet the needs of the small business community.

S. 3202 also addresses the need for increased public participation in all aspects of the Foundation's programs. An advisory council is authorized to which at least six nonscientists are to be appointed. The council is to furnish advice to the Director of the Foundation and to the National Science Board on broad policy issues and to promote public understanding and access to information concerning the activities of the NSF. Provisions to insure wider dissemination of research results and access to information are also included. Significant participation by nonscientists and representatives of public groups is emphasized in the science for citizens program. Greater participation by minorities, women, and the handicapped is mandated for NSF review panels, advisory committees, and all other mechanisms through which the Foundation relies on the expertise of the scientific and nonscientific community.

S. 3202 also establishes a new State science, engineering, and technology program. Grants will be available to States to increase their capacity to apply science, engineering and technology to meeting the needs of their citizens. States are entitled to grants of up to \$100,000 each for the executive and legislative branches of State government, with at least 20 percent of the cost to be borne by the State making the application for funding; \$8,000,000 is authorized for this program.

Amendments to the National Science Foundation Act are also included in S. 3202. They are designed to insure that the Foundation aids in the development

of national policies to foster the application of scientific and technical knowledge to the solution of national and international problems. They clarify the policymaking role of the National Science Board and broaden the membership of the Board to emphasize industrial, technical, and public membership. NSF is also authorized to provide full support to the Office of Science, Engineering, and Technology Policy, established in Public Law 94-282, signed by the President last week.

The pending bill merits the full support of the Senate. The \$832.4 million it authorizes, plus the availability of \$10 million in funds deferred from fiscal year 1976, will insure the continuation of science research and education efforts. It represents a 3.7 percent increase over the administration's request and will mean that over the last 5 years the NSF budget has increased by an average of just 7 percent. The increase authorized is within the amount approved by the Senate Budget Committee for activities of the National Science Foundation and the programs of the National Science and Technology Policy, Organization, and Priorities Act of 1976. The increase recommended by the committee will provide a balanced program and will insure the continuity of research and science education efforts. It will permit the Foundation to sustain scientific strength in the major fields of science and to support research directed to areas where there is a high potential for social benefit or major advances in science.

The legislation was unanimously approved by both the Special Subcommittee on the National Science Foundation and by the full Committee on Labor and Public Welfare. I urge its passage today so that we may go to conference with the House of Representatives in a strong position to obtain early approval of a final bill for the President's signature.

Mr. President, I ask unanimous consent that a fact sheet describing the provisions of S. 3202, be printed at this point in the Record.

There being no objection, the fact sheet was ordered to be printed in the Record, as follows:

FACTSHEET—NATIONAL SCIENCE FOUNDATION
AUTHORIZATION ACT, 1977

| TITLE I—APPROPRIATIONS AUTHORIZED | |
|---|----------------------|
| Mathematical and Physical Sciences and Engineering... | \$233,250,000 |
| Astronomical, Atmospheric, Earth and Ocean Sciences... | 247,000,000 |
| Biological, Behavioral and Social Sciences..... | 132,350,000 |
| Science Education Programs.... | 70,200,000 |
| Research Applied to National Needs, of which less than 10% is set aside for small businesses..... | 68,100,000 |
| Scientific, Technological and International Affairs..... | 24,000,000 |
| Program Development and Management..... | 43,500,000 |
| State Science, Engineering, and Technology Programs..... | 8,000,000 |
| Foreign Currency Program..... | 6,000,000 |
| Total..... | \$832,400,000 |
| Funds earmarked | |
| Graduate Fellowships..... | \$16,000,000 |

| | |
|--|------------|
| Comprehensive Assistance to Undergraduate Science Education, with priority given to two year and four year institutions of higher education which do not grant a doctor's degree | 15,000,000 |
| Research Initiation and Support, of which 40% is available for underfunded institutions | 6,000,000 |
| Ethical and Human Value Implications of Science and Technology | 1,000,000 |
| Earthquake Engineering | 10,000,000 |
| Oceanographic Facilities and Support | 21,200,000 |
| Small Scale, Advanced Energy Research | 2,000,000 |

Program administration

NSF is directed to require that all material published with Foundation support contains a statement that the author or grantee is solely responsible for the findings, opinions, conclusions or recommendations contained in that material.

NSF is directed to furnish technical reports based on or developed with Foundation assistance to the National Technical Information Service of the Commerce Department.

NSF is directed to report to the Congress on the utilization and/or barriers to utilization of each applied research project within one year of its completion.

No funds in excess of 10% may be transferred by NSF between program categories without prior notification to the Congress.

NSF is directed to conduct a study of the feasibility of "blind" reviews as an addition to present review procedures.

TITLE II—NATIONAL AND INTERNATIONAL NEEDS AND RESOURCES

International scientific research, education, and policy analysis

To ensure that US science and technology makes the fullest contribution to research problems which cross national boundaries and to alleviate problems in the developing world as a result of scientific and technical needs related to food, nutrition and agriculture, the NSF is directed to support research and education programs and to conduct and support policy analysis, information dissemination, and international cooperative programs.

Interdisciplinary research

NSF is directed to encourage and promote interdisciplinary research through undergraduate programs, research projects which provide for apprenticeship training, fellowship programs, and arrangements for degree training, including post graduate degrees in more than one discipline, in institutions of higher education.

Science for citizens

NSF is directed to conduct a "Science for Citizens" program to (1) improve public understanding of public policy issues involving science and technology, (2) facilitate the participation of scientists, engineers, graduate and undergraduate students in public activities aimed at the resolution of public policy issues having significant scientific and technical aspects, and (3) enable groups to acquire technical expertise in dealing with the scientific and technical aspects of public policy issues.

NSF is directed to establish review panels for Science for Citizens proposals which include scientists and non-scientists and representatives of the public and private sectors.

\$3,000,000 is earmarked for this program.

Continuing education in science and engineering

NSF is required to develop a program of continuing education in science and engineering to enable scientists and engineers to render more value contributions to the Nation. The program includes the development

of special curricula and educational techniques, as well as the award of fellowships. The program builds on the limited program currently supported by the Foundation, and is targeted on experienced scientists and engineers who have been engaged in their careers for at least five years and is designed to enable them to increase the competence and currency of their knowledge and to prepare for new careers in concert with changes in national priorities.

\$1,000,000 is earmarked for this program.

Minorities and women and handicapped

NSF is directed to intensify efforts to place qualified women, minorities, and the handicapped in executive positions at the Foundation, on advisory committees, and on review panels. This effort is to be conducted in cooperation with organizations active in seeking greater recognition and utilization of the scientific and technical capabilities of minorities and women.

\$5,000,000 is earmarked for "Minority Institutions Improvement".

\$2,500,000 is earmarked for "Minorities, Women and Handicapped Individuals in Science" conferences and workshops to improve scientific literacy and encourage participation and advancement in careers in science.

NSF directed to award planning grants for Minority Centers for Graduate Education in Science and Engineering to be geographically dispersed at institutions with substantial minority enrollment, located near minority population centers, \$2,000,000 is earmarked for this program.

Office of Small Business Research and Development

NSF is directed to establish an Office of Small Business Research and Development to monitor all awards made to small businesses and to ensure that the 10% set aside of applied research funds is fully and effectively utilized. The Office will collect and disseminate information concerning grants awarded to small businesses, analyze the scientific and technical expertise which exists in the small business community, assist individual small companies to obtain information regarding the procedures and programs of the Foundation, and recommend such changes in procedures to the Director of NSF and the National Science Board as may be appropriate to meet the needs of the small business community.

The Office will report quarterly to the Congress on its activities.

Advisory Council to the National Science Foundation

NSF is authorized to establish such a Council only if at least six of the members are individuals who are not scientists, if it furnishes advice to the Board and the Director on broad policy matters and if it promotes public understanding and access to information concerning activities of the NSF.

State science, and engineering, and technology programs

NSF is authorized to make grants to increase the capacity of States to apply science, engineering and technology to meeting the needs of their citizens. Grants of up to \$100,000 each are authorized for the executive and legislative branches of State government, with at least 20% of the cost to be borne by the State making the application for funding. \$8,000,000 is authorized for these programs.

TITLE III—NATIONAL SCIENCE AND TECHNOLOGY POLICY

National Science Foundation

The NSF Act is amended to require that the Foundation aid in the development of national policies to foster the application of scientific and technical knowledge to the solution of national and international problems.

National Science Board

The NSF Act is amended to clarify the policy making role of the National Science Board and broaden the membership of the Board to emphasize industrial, technical, and public membership.

The NSF Act is amended to strengthen the staff support available to the National Science Board and to provide for an annual report.

Assistance to the Office of Science, Engineering and Technology Policy

NSF is authorized to provide information and assistance to the Office of Science, Engineering, and Technology Policy.

TITLE IV—GENERAL PROVISIONS

Foreign expenditures limitation

\$6,000,000 is authorized for expenses incurred outside the US to be paid for in excess foreign currencies.

Consultation and extraordinary expense limitations

Not more than \$5,000 may be used for official consultation, representation or other extraordinary expenses on the approval of authority of the NSF Director.

Obligation limitation

Appropriations are to be available for obligation or expenditure for such period as specified in Acts making such appropriations.

Information requirement

The Director of the National Science Foundation must keep the Committee on Science and Technology of the House of Representatives and the Committee on Labor and Public Welfare of the Senate fully and currently informed with respect to all activities of the National Science Foundation.

Mr. SCHWEIKER. Mr. President, as a member of the Special Subcommittee on the National Science Foundation, I would like to express my support for S. 3202, the fiscal year 1977 NSF Authorization Act. The Foundation sponsors basic research in all major fields of science, and applied research leading to improvements in technology and economic productivity, international cooperative research efforts, and science policy research and analysis activities. The NSF also coordinates the Federal effort to strengthen science education in order to insure an adequate supply of scientific and technological personnel with greater participation of minorities, women, and handicapped individuals, to promote public understanding of issues involving science and technology, and to improve the effectiveness of science education to meet the needs of a broader range of students.

The bill reported by the Committee on Labor and Public Welfare continues NSF's programs in research and science education. It provides for a 10 percent set-aside of Research Applied to National Needs—RANN—program funds for research conducted by small businesses, and establishes an Office of Small Business Research and Development to promote cooperation between the Foundation and the small business community. In addition, the committee adopted an amendment to assist State governments in establishing and strengthening science, engineering and technology programs. As a member of the Subcommittee on the Handicapped, I am pleased that the bill was also amended by the committee to include provisions for employment, advisory and peer review partici-

pation by handicapped individuals, as well as forums, conferences and workshops relating to the handicapped in science.

Mr. President, S. 3202 provides for continuity of the Foundation's research and science education efforts. It will permit the NSF to sustain scientific strength in the major fields of science, and to support research directed toward societal benefit and major advances in science. I urge my colleagues to support this legislation.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 844, S. 3202, and that all after the enacting clause in H.R. 12566 be stricken; that the text of S. 3202 be substituted therefor; that the bill, H.R. 12566, as amended, be passed, that the motion to reconsider be laid on the table, and that S. 3202 be indefinitely postponed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. So the bill (H.R. 12566), as amended, was passed as follows:

H.R. 12566

That this Act may be cited as the "National Science Foundation Authorization Act, 1977".

TITLE I—APPROPRIATIONS AUTHORIZED AUTHORIZATION FOR ACTIVITIES OF THE NATIONAL SCIENCE FOUNDATION

SEC. 101. (a) There is authorized to be appropriated to the National Science Foundation for the fiscal year 1977, for the following categories:

- (1) Mathematical and Physical Sciences and Engineering, \$233,250,000.
- (2) Astronomical, Atmospheric, Earth and Ocean Sciences, \$247,000,000.
- (3) Biological, Behavioral, and Social Sciences, \$132,350,000.
- (4) Science Education Programs, \$70,200,000.
- (5) Research Applied to National Needs, \$68,100,000.
- (6) Scientific, Technological, and International Affairs, \$24,000,000.
- (7) State Science, Engineering, and Technology Programs, \$8,000,000.
- (8) Program Development and Management, \$43,500,000.

(b) Notwithstanding any other provision of this or any other Act—

(1) of the amount authorized under category (2) of subsection (a) of this section, \$21,200,000 shall be available for the program "Oceanographic Facilities and Support";

(2) of the amount authorized under category (4) of subsection (a) of this section—

(A) \$16,000,000 shall be available for the programs "Graduate Fellowships in Science and Engineering" and "National Needs Fellowships";

(B) \$15,000,000 shall be available for the program "Comprehensive Assistance to Undergraduate Science Education", with priority given to applications from four-year and two-year institutions of higher education which do not grant a doctor's degree in science or engineering;

(C) \$6,000,000 shall be available for the program "Research Initiation and Support", of which not less than 40 per centum shall be available on a competitive basis to institutions of higher education granting doctoral degrees in the sciences or engineering—

(1) which received research support from the National Science Foundation during the fiscal year 1976, and

(2) for which Foundation support and other Federal research and development support to that institution per graduate student in science and engineering was substantially less than the national average of such support per graduate student in science and engineering, as determined by criteria established by the Foundation; and

(D) \$1,000,000 shall be available for the program "Ethical and Human Value Implications of Science and Technology", including ethical and value issues arising in the context of physical science, biological science, and clinical medicine;

(3) of the amount authorized for category (5) under subsection (a) of this section—

(A) \$10,000,000 shall be available for the program "Earthquake Engineering";

(B) \$2,000,000 shall be available for the support of especially promising proposals for small scale research on advanced forms of energy if such research proposals do not duplicate programs supported by the Energy Research and Development Administration and are fully coordinated with the Energy Research and Development Administration; and

(C) not less than 10 per centum of such amount shall be expended to small business concerns.

PROGRAM ADMINISTRATION

SEC. 102. (a) Whenever any material is published, which is based upon or developed under a project assisted by the National Science Foundation, the Foundation shall require an acknowledgement of National Science Foundation support and a statement as to whether each author or the Foundation is responsible for the findings, opinions, conclusions, or recommendations contained in that material.

(b) The National Science Foundation shall arrange for the dissemination of all substantive technical reports, including policy and applied research material, through the National Technical Information Service of the Department of Commerce. Such dissemination shall occur within sixty days of receipt by the Foundation of such reports or of notification to the Foundation of the completion of the reports.

(c) Not later than one year after the completion of research projects assisted under the program "Research Applied to National Needs", or any similar program, each principal investigator shall report to the National Science Foundation on—

(1) the extent to which the results of the research conducted under such project have been utilized, and

(2) any barriers to such utilization which have been identified with respect to each such project.

The reports required by this subsection shall be made available to the Congress and to the public.

(d) (1) The Director of the National Science Foundation is authorized and directed to conduct a feasibility study of operating the peer review system used in the evaluation of grant proposals within the Foundation so as to assure that the identity of the proposer is not known to the reviewers of the proposal. Any such system shall be considered to supplement and not to supplant the peer review system in operation in the Foundation on the date of enactment of this Act. In carrying out the provisions of this section the Director is authorized—

(A) to survey a representative group of members of the academic community,

(B) to examine existing "blind" review systems being used by the public and private sectors, and

(C) to make proposals, including recommendations for legislation if necessary, to carry out an experimental "blind" review system within the National Science Foundation.

(2) The Director shall submit, not later than one year after the date of enactment of this Act, a report to the Senate Committee on Labor and Public Welfare and the House Committee on Science and Technology on his activities under this subsection.

(e) No funds may be transferred from any particular category listed in section 101 to any other category or categories listed in such section if the total of the funds so transferred from that particular category would exceed 10 per centum thereof, and no funds may be transferred to any particular category listed in section 101 from any other category or categories listed in such section if the total of the funds so transferred to that particular category would exceed 10 per centum thereof, unless—

(1) a period of thirty legislative days has passed after the Director or his designate has transmitted to the Speaker of the House of Representatives and to the President of the Senate and to the Committee on Science and Astronautics of the House of Representatives and to the Committee on Labor and Public Welfare of the Senate a written report containing a full and complete statement concerning the nature of the transfer and the reason thereof, or

(2) each such committee before the expiration of such period has transmitted to the Director written notice to the effect that such committee has no objection to the proposed action.

TITLE II—NATIONAL AND INTERNATIONAL NEEDS AND RESOURCES

INTERNATIONAL SCIENTIFIC RESEARCH, EDUCATION, AND POLICY ANALYSIS

SEC. 201. (a) The National Science Foundation is authorized and directed to support basic and applied research and education programs, and to conduct and support policy analysis, information dissemination, and international cooperative programs consistent with the Nation's foreign policy objectives designed to make the results of scientific research conducted abroad more readily available to United States scientists, engineers, and technologists, to promote international cooperation in science and technology, to assist in the resolutions of critical and emerging problems with significant scientific or technical components, such as world food and population problems and to insure full coordination of these programs with related activities conducted by other Federal agencies and organizations. The Director of the National Science Foundation shall consult with the Secretary of State to assure that the programs authorized under this section are consistent with the foreign policy objectives of the United States.

(b) In cooperation with the Office of Science and Technology Policy, the Department of State, the Agency for International Development, the Department of Commerce, the Department of Agriculture, and other appropriate agencies and organizations, the Director of the National Science Foundation is directed to conduct a study of international scientific research, education, and policy analysis and to ensure full coordination of the study. The results of the study shall be submitted to the Committee on Science and Technology of the House of Representatives and the Committee on Labor and Public Welfare of the Senate not later than March 1, 1977.

INTERDISCIPLINARY RESEARCH

SEC. 202. The National Science Foundation is directed to encourage and promote the conduct of interdisciplinary research through broadly based undergraduate interdisciplinary education programs, interdisciplinary research projects which provide for apprenticeship training, interdisciplinary fellowship programs, and arrangements for degree training, including postgraduate degrees in more

than one discipline, in institutions of higher education.

SCIENCE FOR CITIZENS

SEC. 203. (a) The National Science Foundation is authorized and directed to conduct a "Science for Citizens Program", which is designed to—

(1) improve public understanding of public policy issues involving science and technology;

(2) facilitate the participation of experienced scientists and engineers as well as graduate and undergraduate students in public activities aimed at the resolution of public policy issues having significant scientific and technical aspects; and

(3) enable groups to acquire necessary technical expertise to assist them in dealing with the scientific and technical aspects of public policy issues.

(b) The membership of each review panel established to evaluate applications for awards and planning grants under this section shall have balanced representation from the scientific and nonscientific community and the public and private sectors.

(c) Of the amount authorized for category (4) of section 101(a) \$3,000,000 shall be available for the Science for Citizens Program including an augmented Public Understanding of Science Program.

CONTINUING EDUCATION IN SCIENCE AND ENGINEERING

SEC. 204. (a) The National Science Foundation shall initiate an educational program of continuing education in science and engineering in order to enable scientists and engineers who have been engaged in their careers for at least five years to pursue courses of study designed to—

(1) provide them with new knowledge, techniques, and skills in their special fields; or

(2) acquire new knowledge, techniques, and skills in other fields which will enable them to render more valuable contributions to the Nation.

(b) The program developed under this section shall include, but not be limited to—

(1) the development of special curricula and education techniques for continuing education in science and technology; and

(2) the award of fellowships to scientists and engineers to enable them to pursue courses of study which provide continuing education in science and engineering.

(c) The Foundation is authorized and directed to make grants to, and to enter into contracts with, institutions of higher education and other academic institutions, non-profit institutes and organizations, and private business firms, for the purpose of developing courses and curricula specially designed for continuing education in science and technology under this section.

(d) (1) The Foundation is authorized to award continuing education fellowships to scientists and engineers to enable them to pursue appropriate courses of study.

(2) The Foundation shall allocate fellowships under this subsection in such manner, insofar as practicable, as will—

(A) attract highly qualified applicants; and

(B) provide an equitable distribution of such fellowships throughout the United States.

(3) The Foundation shall pay to persons awarded fellowships under this section such stipends (including such allowances for subsistence, health insurance, relocation expenses, and other expenses for such persons and their dependents) as it may prescribe by regulation designed to accomplish the purposes of this Act.

(4) Fellowships shall be awarded under this subsection upon application made at such times and containing such information

as the Foundation shall by regulation require.

(e) Of the amount authorized under category (4) of section 101(a) \$1,000,000 shall be available for the activities authorized by this section.

MINORITIES, WOMEN, AND HANDICAPPED INDIVIDUALS

SEC. 205. (a) The Director of the National Science Foundation shall initiate an intensive search for qualified women, blacks, Chicanos, Spanish-surnamed Americans, American Indians, members of other minority groups, and handicapped individuals to fill executive level positions in the National Science Foundation. In carrying out the requirement of this subsection, the Director shall work closely with organizations which have been active in seeking greater recognition and utilization of the scientific and technical capabilities of minorities, women, and handicapped individuals. The Director shall improve the representation of minorities, women, and handicapped individuals on advisory committees, review panels, and all other mechanisms by which the scientific community provides assistance to the Foundation. The Director of the National Science Foundation shall report quarterly to the Congress on the status of minorities, women, and handicapped individuals and activities undertaken pursuant to this section.

(b) Notwithstanding any other provision of this or any other Act—

(1) from the amount authorized under category (4) of section 101(a) \$5,000,000 shall be available for the program "Minority Institutions Improvement"; and

(2) from the amount authorized under category (4) of section 101(a) \$2,500,000 shall be available for a program "Minorities, Women, and Handicapped Individuals in Science" for experimental forums, conferences, workshops or other activities designed to improve scientific literacy and to encourage and assist minorities, women, and handicapped individuals to undertake and to advance in careers in scientific research and science education.

(c) (1) In order to promote increased participation by minorities in careers in science and engineering, the National Science Foundation is authorized and directed to make available planning grants for programs including, but not limited to, Minority Centers for Graduate Education in Science and Engineering in accordance with this subsection.

(2) The planning grants for Minority Centers for Graduate Education shall be used to determine the need for and feasibility of developing Centers to be established at geographically dispersed educational institutions which—

(A) have substantial minority student enrollment;

(B) are geographically located near minority population centers;

(C) demonstrate a commitment to encouraging and assisting minority students, researchers, and faculty;

(D) have an existing or developing capacity to offer doctoral programs in science and engineering;

(E) will support basic research and the acquisition of necessary research facilities and equipment;

(F) will serve as a regional resource in science and engineering for the minority community which the Center is designed to serve; and

(G) will develop joint educational programs with nearby undergraduate institutions of higher education which have a substantial minority student enrollment.

(3) The Director, in consultation with groups which have been active in seeking greater recognition of the scientific and technical capabilities of minorities, shall estab-

lish criteria for the award of planning grants, and shall report to the Committee on Science and Technology of the House of Representatives and the Committee on Labor and Public Welfare of the Senate on the results of activities including an evaluation and assessment of the entire program carried out under this subsection not later than March 1, 1977.

(4) From funds authorized under category (4) of section 101(a), \$2,000,000 shall be available to carry out the provisions of this subsection.

OFFICE OF SMALL BUSINESS RESEARCH AND DEVELOPMENT

SEC. 206. The National Science Foundation is authorized and directed to establish within the Office of Government and Public Programs an Office of Small Business Research and Development. The Foundation through the Office of Small Business Research and Development and in cooperation and consultation with the Small Business Administration shall—

(1) foster communication between the National Science Foundation and the small business community, and insure that the set-aside for small business concerns provided under this Act or any other Act authorizing appropriations for the National Science Foundation is fully and effectively utilized;

(2) collect, analyze, compile, and publish information concerning grants and contracts awarded to small business concerns by the Foundation, and the procedures for handling proposals submitted by small business concerns;

(3) assist individual small business concerns in obtaining information regarding programs, policies, and procedures of the Foundation, and assure the expeditious processing of proposals by small business concerns based on scientific and technical merit;

(4) recommend to the Director and to the National Science Board such changes in the procedures and practices of the Foundation as may be required to enable the Foundation to draw fully on the resources of the small business research and development community; and

(5) make quarterly reports to the Congress concerning the activities of the Office of Small Business Research and Development.

The Foundation and the Small Business Administration shall prepare a report on the scientific and technical expertise and capability in the small business community in collaboration with organizations representing small business concerns.

STATE SCIENCE, ENGINEERING, AND TECHNOLOGY PROGRAMS

SEC. 207. (a) The Director of the National Science Foundation is authorized to make grants to States, in accordance with the provisions of this section, for the purpose of increasing the State's capacity for wise application of science, engineering, and technology to meeting the needs of its citizens.

(b) Each application for a grant under this section shall be submitted by the executive branch or the legislative branch, or both, of a State government.

(c) No grant made under this section to a State government may exceed \$100,000 and no recipient of a grant under this section is eligible to apply for a subsequent grant under this section. Each grant under this section shall be available for a two-year program.

(d) No grant may be made under this section unless an application is submitted at such time, in such manner, and containing or accompanied by such information as the Director of the National Science Foundation may reasonably require. Each such application shall contain provisions designed to assure that—

(1) the capacity of the State for the application of science, engineering, and technol-

ogy to meeting State needs will be measurably increased;

(2) the State will pay from non-Federal sources the non-Federal share of the cost of the application;

(3) it is the intention of the State receiving the grant to assume the full costs of any activities supported by the grant no later than two years after the grant is made.

(e) (1) Within ninety days after the date of enactment of this Act the Director of the National Science Foundation shall, by rule, promulgate guidelines for the preparation of grant applications under this section and shall publish such guidelines in the Federal Register.

(2) Guidelines issued by the Director of the National Science Foundation under this section shall be flexible enough to permit each State to meet the requirements of subsection (d) (1) in a manner suitable to the circumstances of each such State.

(f) The Director of the National Science Foundation shall not disapprove any application which meets requirements of subsection (d) of this section, without affording that State notice and opportunity for a hearing.

(g) (1) Each application for financial assistance under this section shall be submitted to the Director of the National Science Foundation on or prior to September 30, 1978.

(2) No grant may be made under this section for more than 80 per centum of the cost of the activities specified in the application submitted under this section.

ADVISORY COUNCIL TO THE NATIONAL SCIENCE FOUNDATION

SEC. 208. (a) The National Science Foundation is authorized to establish an Advisory Council on the National Science Foundation (hereinafter in this section referred to as the "Advisory Council") composed of twenty-four members appointed by the Director.

(b) No such Advisory Council may be established, unless—

(1) at least six members appointed in the Advisory Council are individuals who are not scientists; and

(2) the Advisory Council furnishes advice to the Board and the Director on broad policy matters relating to the activities of the National Science Foundation, particularly science research and education policy, and promotes public understanding and access to information concerning activities of the Foundation.

(c) Each member of the Advisory Council authorized by this section who is appointed from private life shall receive \$75 per diem (including traveltime), for each day during which that member is engaged in the actual performance of duties as a member of the Advisory Council. Any member of the Advisory Council who is in the legislative, executive, or judicial branch of the United States Government shall serve without additional compensation. All members of the Council shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

TITLE III—NATIONAL SCIENCE AND TECHNOLOGY POLICY

NATIONAL SCIENCE FOUNDATION

SEC. 301. Section 3(d) of the National Science Foundation Act of 1950 is amended to read as follows:

"(d) The Foundation shall recommend and encourage the pursuit of national policies designed to foster research and education in science and engineering, and the application of scientific and technical knowledge to the solution of national and international problems."

NATIONAL SCIENCE BOARD

SEC. 302. (a) Section 4 of the National Science Foundation Act of 1950 is amended—

(1) by inserting before the period at the

end of subsection (a) a comma and the following: "within the framework of applicable national policies as set forth by the President and the Congress" and

(2) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of science, social science, engineering, agriculture, industry, education, or public affairs, (2) shall be selected solely on the basis of established records of distinguished service, and (3) shall be so selected as to provide representation of the views of leaders from a diversity of fields and points of view from all areas of the Nation. In the making of nominations of individuals for appointment as members, the President shall give due consideration to any recommendations for nomination which may be submitted to him by the National Academy of Sciences, the National Academy of Engineering, the National Association of State Universities and Land-Grant Colleges, the Sea Grant Association, the Association of American Universities, the Association of American Colleges, the American Association of State Colleges and Universities, the American Association of Community and Junior Colleges, by other scientific, technical, public interest or educational associations, and by organizations committed to the advancement of minorities, women, and handicapped individuals in science."

(b) Section 4 of such Act, as amended by the National Science and Technology Policy, Organization, and Priorities Act of 1976 (Public Law 94-282) is amended by redesignating subsections (g), (h), and (i), and all references thereto, as subsections (h), (i), and (j), respectively, and by inserting after subsection (f) the following new subsection:

"(g) The Board shall prepare and submit on or before January 31 in each year an annual report to the President and to the Congress, on the status and health of science and of its various disciplines. The report may include such recommendations as the Board may deem timely and appropriate."

(c) Section 4(h) of such Act as redesignated by this section is amended—

(1) by inserting after "the Director," the following: "after consultation with the Chairman of the Board"; and

(2) by striking out "GS-15" and inserting in lieu thereof "GS-18".

ASSISTANCE TO THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY

SEC. 303. In order to carry out the policy of the National Science and Technology Policy, Organization, and Priorities Act of 1976, the National Science Foundation is authorized to—

(1) gather and analyze information regarding Federal expenditures for research and engineering activities, and the employment and availability of scientific, engineering, and technical manpower, which the Foundation has assembled pursuant to paragraphs (1), (5), (6), and (7) of section 3(a) of the National Science Foundation Act of 1950 in order to assist in the appraisal of the implementation of the policies set for the title I of the National Science and Technology Policy, Organization, and Priorities Act of 1976;

(2) provide such information and appraisals to the Office of Science and Technology Policy; and

(3) provide such additional information and staff assistance to the Office of Science and Technology Policy as the office may request.

TITLE IV—GENERAL PROVISIONS

FOREIGN EXPENDITURES LIMITATION

SEC. 401. In addition to such sums as are authorized by section 101, not to exceed \$6,000,000 is authorized to be appropriated for fiscal year 1977, for expenses of the Na-

tional Science Foundation incurred outside the United States to be paid for in foreign currencies which the Treasury Department determines to be excess to the normal requirements of the United States.

CONSULTATION AND EXTRAORDINARY EXPENSE LIMITATION

SEC. 402. Appropriations made pursuant to this Act may be used, but not to exceed \$5,000 for official consultation, representation, or other extraordinary expenses upon the approval or authority of the Director of the National Science Foundation, and his determination shall be final and conclusive upon the accounting officers of the Government.

OBLIGATION LIMITATION

SEC. 403. Appropriations made pursuant to this Act shall remain available for obligation, for expenditure, or for obligation and expenditure, for such period or periods as may be specified in Acts making such appropriations.

INFORMATION REQUIREMENT

SEC. 404. Notwithstanding any other provision of this or any other Act, the Director of the National Science Foundation shall keep the Committee on Science and Technology of the House of Representatives and the Committee on Labor and Public Welfare of the Senate fully and currently informed with respect to all of the activities of the National Science Foundation.

Mr. ROBERT C. BYRD. Now, Mr. President, I move that the Senate insist on the Senate amendments to H.R. 12566 and request a conference with the House of Representatives, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Acting President pro tempore (Mr. CULVER) appointed Mr. KENNEDY, Mr. PELL, Mr. MONDALE, Mr. CRANSTON, Mr. EAGLETON, Mr. LAXALT, Mr. STAFFORD, and Mr. SCHWEIKER conferees on the part of the Senate.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Nevada is recognized for not to exceed 15 minutes.

SENATE CONCURRENT RESOLUTION 119—EXTENDING RECOGNITION TO THE CONGRESSIONAL COUNTRY CLUB ON BEING THE HOST OF THE 58TH PGA NATIONAL GOLF CHAMPIONSHIP

Mr. CANNON. Mr. President, in behalf of myself, Senators MANSFIELD, HUGH SCOTT, ROBERT C. BYRD, FANNIN, NUNN, BAYH, HARRY F. BYRD, BEALL, MATHIAS, HATHAWAY, and WILLIAM L. SCOTT, I am pleased to submit a concurrent resolution today whereby the Congress congratulates the Congressional Country Club of Bethesda, Md., as having been selected to host the 58th PGA National Championship. Congressional has a renowned and respected championship golf course and is proud that the PGA is coming to the State of Maryland this Bicentennial year.

President Ford is the honorary chairman of the PGA this year and I am pleased to join with our President and other sponsors of this resolution in recognizing not only the fine tradition of the PGA, but also the outstanding fea-

tures of the club hosting this special event. Congressional has a long history of testing the skills of the Nation's finest golfers and I know those golfers look forward to participating in this year's PGA. Many Members of this body have had the pleasure of playing on this nearby championship course.

I am certain that the two Maryland Senators, Mr. BEALL and Mr. MATHIAS, are especially proud that the State of Maryland, which is celebrating its Bicentennial anniversary, will be hosting professional golfers and visitors from all corners of the world this August. I am equally certain that this national contest will reflect favorably upon the State of Maryland and the Nation's Capital.

Mr. President, I send the concurrent resolution to the desk and ask unanimous consent for its immediate consideration.

The ACTING PRESIDENT pro tempore. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 119) extending recognition to the Congressional Country Club on being the host of the 58th PGA National Golf Championship.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to its consideration.

The concurrent resolution (S. Con. Res. 119) was considered and agreed to. The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

Whereas, the Congressional Country Club located in Montgomery County, Maryland, will host the 58th PGA Championship during the period from August 9, 1976 through August 15, 1976;

Whereas, the State of Maryland is celebrating its Bicentennial anniversary;

Whereas, the United States of America is also celebrating its Bicentennial anniversary;

Whereas, Gerald R. Ford, President of the United States of America, has so graciously agreed to be Honorary Chairman of the 58th PGA Championship;

Whereas, the Congressional Country Club is recognized as a fair and championship test of the skills of the 150 professional golfers who will be competing for such Championship;

Whereas, the Congressional Country Club has hosted such national golfing events as the 1949 USGA Junior National Championship, the 1959 USGA Women's Amateur Championship, and the 1964 USGA Open Championship;

Whereas, all of these national events were successfully executed through the volunteer efforts of thousands of persons, organizations and businesses in the Nation's Capital and the surrounding areas, principally the middle Atlantic states; and

Whereas, the PGA Championship, recognized as one of the major golf tournaments played in the world, will bring honor and prestige to the State of Maryland and the Nation's Capital: Now, therefore, be it

Resolved, by the Senate (the House of Representatives concurring), That Congress congratulates the Congressional Country Club upon being selected to host the 58th PGA Championship and, in so doing, compliments the Congressional Country Club on being such a renowned and respected championship golf course.

Sec. 2. The Secretary of the Senate shall transmit copies of this Resolution to the

Congressional Country Club and to the Professional Golfers' Association of America.

ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 11:30 a.m., with statements therein limited to 5 minutes. Is there morning business?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. METCALF. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR—H.R. 8532

Mr. METCALF. Mr. President, I ask that during the course of the debate and vote on H.R. 8532, the antitrust bill, Mr. Winslow Turner of the Government Operations Committee staff be granted privilege of the floor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Roddy, one of his secretaries.

REPORT OF THE RAILROAD RETIREMENT BOARD—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. CULVER) laid before the Senate the following message from the President of the United States, which was referred to the Committee on Labor and Public Welfare:

To the Congress of the United States:

I hereby transmit to you the Annual Report of the Railroad Retirement Board for fiscal year 1975.

The Report indicates that the Board paid retirement and survivor payments in excess of \$3 billion to almost one million one hundred thousand individuals during the fiscal year, and that it made unemployment and sickness benefit payments totaling \$67 million to over 137,000 claimants.

This Report also includes a summary of legislation enacted in 1974, which restructured the retirement and survivor program and substantially improved the financing of the railroad retirement system. In addition, it includes a description of the 1975 amendments to the Railroad Unemployment Insurance Act, which increased the daily rate of unemployment and sickness benefits payable to railroad workers and made other improvements in that program.

GERALD R. FORD.

THE WHITE HOUSE, May 27, 1976.

REPORT ON THE COASTAL ZONE MANAGEMENT ACT—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. CULVER) laid before the Senate the following message from the President of the United States, which was referred to the Committee on Commerce:

To the Congress of the United States:

I am transmitting herewith the third annual report from the Secretary of Commerce covering the significant developments that took place during the second full year of implementation of the Coastal Zone Management Act of 1972. The period covered is fiscal year 1975, when the States began full development of their coastal programs.

The country's urgent need for new domestic sources of energy and our concern for minimizing environmental damage and community disruption have combined to underscore the importance of the effort put forth in the coastal zone program. The program points out the importance of cooperation at the State and Federal level in order to provide appropriate and timely solutions to these important problems.

GERALD R. FORD.

THE WHITE HOUSE, May 27, 1976.

MESSAGES FROM THE HOUSE

At 12:45 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the House has passed the bill (H.R. 13965) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, and for other purposes, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the amendment of the Senate to the concurrent resolution (H. Con. Res. 538) providing for the printing as a House document of the Constitution of the United States (pocket-size edition).

The message further announced that the House agrees to the amendments of the Senate to the concurrent resolution (H. Con. Res. 646) providing for a conditional adjournment of the House from May 27 until June 1, 1976.

At 2:15 p.m., a message from the House of Representatives delivered by Mr. Hackney announced that the House disagrees to the amendment of the Senate to the bill (H.R. 12438) to authorize appropriations during the fiscal year 1977, for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve of each Reserve component of the Armed Forces and of civilian personnel of the Depart-

ment of Defense, and to authorize the military training student loads and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. PRICE, Mr. HEBERT, Mr. BENNETT, Mr. STRATTON, Mr. ICHORD, Mr. NEDZI, Mr. RANDALL, Mr. CHARLES H. WILSON of California, Mr. LEGGETT, Mr. BOB WILSON, Mr. DICKINSON, Mr. WHITEHURST, and Mr. SPENCE were appointed managers of the conference on the part of the House.

EXECUTIVE REPORTS OF COMMITTEES

Mr. THURMOND. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the nominations of Lt. Gen. John Howard Elder, Jr., U.S. Army, to be placed on the retired list in the grade of lieutenant general; and there are five for appointment to the grade of major general; and there are four for appointment to the grade of brigadier general. Also, Vice Adm. Daniel J. Murphy, U.S. Navy, for appointment to the grade of admiral; and Rear Adm. Vincent A. Lascara, U.S. Navy, for appointment to the grade of vice admiral; and Maj. Gen. Rolland V. Heiser, U.S. Army, to be lieutenant general; and Lt. Gen. William C. Gribble, Jr., U.S. Army, to be placed on the retired list in the grade of lieutenant general. Rear Adm. William O. Miller, U.S. Navy, to be judge advocate general of the Navy with the rank of rear admiral for a term of 4 years. Also, there are 14, in the Army, for promotion to the grade of brigadier general (list beginning with Robert C. Kingston). I ask unanimous consent that these nominations be placed on the Executive Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. In addition, Mr. President, there are 67 in the Air Force for promotion to the grade of lieutenant colonel and below—list beginning with Robert W. Johnson; and there are 803 in the Army for promotion to the grade of second lieutenant—list beginning with Verlin L. Abbott; and there are 556 in the Army for promotion to the grade of colonel and below and one for appointment as permanent professor, U.S. Military Academy—list beginning with William F. Carroll. There are also 865 in the Navy for promotion to the grade of commander and below—list beginning with Philip M. Abbott; and there are 934 in the Air Force, U.S. Air Force Academy graduates for appointment in the Regular Air Force in the grade of second lieutenant—list beginning with Danny J. Acoc. There are also 19 in the Navy for appointment as permanent lieutenants and temporary lieutenants—list beginning with Robert F. Fremont II; and there are 26 in the Marine Corps, Naval Reserve Officer Training Corps graduates for permanent appointment to the grade of second lieutenant—list beginning with Crystal M. Chamberlain. There are 851 cadets graduating from the U.S.

Military Academy and Col. Roy K. Flint to be appointed as permanent professor of history, U.S. Military Academy—list beginning with Roy K. Flint.

There are 47 in the Navy, for appointment to temporary commanders and below—list beginning with Randall S. Arrington; and there are 1,649, in the Navy and Naval Reserve, for permanent appointment to the grade of commander—list beginning with Peter Darby Abbott.

Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of April 26, May 4, 6, 11, and 24, 1976, at the end of the Senate proceedings.)

HOUSE BILL REFERRED

The bill (H.R. 13965) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. RIBICOFF:

S. 3500. A bill to improve the procedures under section 201 of the Trade Act of 1974, and for other purposes. Referred to the Committee on Finance.

By Mr. BURDICK:

S. 3501. A bill to amend the act entitled "An Act to authorize establishment of the Fort Union Trading Post National Historic Site, North Dakota and Montana, and for other purposes," approved June 26, 1966 (80 Stat. 211). Referred to the Committee on Interior and Insular Affairs.

By Mr. GRIFFIN (for Mr. STEVENS):

S. 3502. A bill to amend the Voting Rights Act of 1965 to provide more practical voting assistance for certain language minority groups in Alaska. Referred to the Committee on the Judiciary.

By Mr. MONDALE:

S. 3503. A bill to direct the Administrator of the Federal Aviation Administration to promulgate noise standards for certain aircraft in order to reduce noise emissions and to improve the human environment, and to provide for certain payments to operators of the aircraft required to meet the noise standards in order to permit the operators to retrofit or replace such aircraft. Referred to the Committee on Commerce.

By Mr. SCHWEIKER:

S. 3504. A bill to extend the boundary of the Tincinn National Environmental Center, and for other purposes. Referred to the Committee on Commerce.

By Mr. BUCKLEY:

S. 3505. A bill to amend Section 121 of the

Internal Revenue Code. Referred to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRIFFIN (for Mr. STEVENS):

S. 3502. A bill to amend the Voting Rights Act of 1965 to provide more practical voting assistance for certain language minority groups in Alaska. Referred to the Committee on the Judiciary.

Mr. GRIFFIN. On behalf of the Senator from Alaska (Mr. STEVENS), I introduce a bill and I ask unanimous consent that a statement prepared by him in connection with the bill, the text of the bill and certain other material be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR STEVENS

I am today introducing a bill to correct an oversight in the Voting Rights Act extension passed last summer by the Congress and signed into law as Public Law 94-73.

The bill, as enacted, provides in Title II that if more than 5% of the citizens of voting age in a State or political subdivision are members of a single language minority, the State or political subdivision must provide ballot materials in the language of the minority group. The Act provides an exception—if the minority language is oral or unwritten, the State or political subdivision need provide only oral assistance to voters.

The bill I am introducing today would provide that in the case of Alaskan Natives, if the predominant language was historically unwritten, only oral assistance need be provided.

I was successful in having a similar amendment added to Title III of the Extension Act, but because floor managers were reluctant to accept amendments as we worked toward final passage, this amendment to Title II was omitted.

I fully share in the desires of the floor managers of the extension to insure that language minorities are not denied their fair, equal participations in the voting process, but we must correct past inequities in a realistic and practical way. The provision in existing law is unnecessary and burdensome.

Alaska Native languages are traditionally unwritten. In the past, they were not written and no one who traditionally spoke the languages ever read the languages for the simple reason that they were never written.

In recent years, to preserve the languages, anthropologists have begun to transcribe the spoken word. This is the first time that the Alaska Native languages have been written. Very few of those who traditionally used Native languages can read the written versions. To require Alaska to provide ballots in a language traditionally unwritten and which virtually no one can read is unnecessary and burdensome. Numerous Alaska Native leaders have contacted Alaska's congressional delegation about this point.

Alaska has had a law since before the original 1965 Voting Rights Act requiring election judges to provide oral voting assistance to those who cannot read English. Indeed, the ability to read English is not required under Alaska law, so the oral assistance provision is the most effective way of insuring full voter participation. To require ballots and election materials in an unreadable language will cost much more and do nothing to achieve the goals of the Act.

As a matter of fact, strict adherence to the law by Alaska will probably result in less voter assistance. My State is one of the few that publishes a voter education pamphlet. Each candidate is given equal space in the booklet and it is distributed to every voter in the State. Under Public Law 94-73, that pamphlet would have to be published in a variety of languages other than English. Aside from being unnecessary, since no one can read those other languages, our Lieutenant Governor, who supervises the elections, tells me that the cost of preparing the pamphlet will mean it will no longer be available at all.

In short, the current law will not improve voter participation in Alaska. It will require ballots to be printed in a language which almost no one reads and it will mean the end of a very effective voter assistance brochure. It will only cost; there will be no benefits.

The bill I am proposing today will solve this problem by exempting languages which are historically unwritten from the requirements of the law. Passage of the amendment will permit Alaska to continue to provide the voter assistance brochure and the oral assistance which the State already provides, but it will end the current requirement that ballots be printed in languages few can read. I urge prompt favorable consideration of this bill.

S. 3502

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(f) (4) of the Voting Rights Act of 1965 is amended by inserting after "unwritten" the following: "or in the case of Alaska Natives, if the predominant language is historically unwritten".

TELEGRAMS

FAIRBANKS, ALASKA.

Congressman DON YOUNG,
U.S. House of Representatives, Longworth
Building, Washington, D.C.

DEAR CONGRESSMAN YOUNG: Regarding H.R. 6219 Voting Rights Act of 1975 relating to ballots being printed in minority languages when the minority population is over five percent. Request that Alaska Natives be exempted from this provision for the following reason. The native languages in Alaska have only recently been reduced to writing and the educational reading process is only just beginning.

SAM KITO, Jr.,

Executive Vice President Doyon Ltd. and
President, Fairbanks Native Association

ANCHORAGE, ALASKA.

Congressman DON YOUNG,
Capitol Hill, D.C.:

The Alaska Federation of Natives Incorporated does endorse the position of Congressman Don Young in his efforts to exempt the State of Alaska from printing bilingual ballots. Many native languages and dialects are just being put into written form. The number of Alaskan Natives able to read their language is minimal. Alaska does not have literacy test as a condition of voting. The problem of Alaskans in voting is not solved by different writings or languages, nor will the general native populous benefit from this section of H.R. 6219.

ROGER LANG,

President, Alaska Federation of
Natives, Inc.

ANCHORAGE, ALASKA.

Representative DON YOUNG,
Capitol Hill, D.C.:

Cook Inlet Region, Inc. supports your position in striking Alaska from section 207 of H.R. 6219 Voting Rights Act of 1975.

R. ANDY JOHNSON,

President Cook Inlet Region, Inc.

Attn: DON YOUNG:

Doyon, Ltd. representing 10,000 Indians in interior Alaska wish to oppose the requirement for voting ballots to be written in Indian dialects. Under State law Alaska has no requirement that voters must read or write.

Additionally a requirement such as this would be an extreme hardship to the State as we have over 35 dialects and very few people actually know how to read or write in any language.

JOHN SACKETT,

President, Doyon, Ltd.

By Mr. MONDALE:

S. 3503. A bill to direct the Administrator of the Federal Aviation Administration to promulgate noise standards for certain aircraft in order to reduce emissions and to improve the human environment, and to provide for certain payments to operators of the aircraft required to meet the noise standards in order to permit the operators to retrofit or replace such aircraft. Referred to the Committee on Commerce.

Mr. MONDALE. Mr. President, since 1968, Congress has been working to quiet the din of aircraft noise affecting the 16 million Americans living within the noise impact corridors of our Nation's airports.

In 1968, Congress added a new section to the Federal Aviation Act requiring the Federal Aviation Administration to set standards for the relief and protection of the public from unnecessary aircraft noise. The FAA then set noise emission standards for subsonic transport aircraft and jet aircraft of new design. This resulted in the quieter performance of the new widebody aircraft. In 1973, the FAA ruled that newly produced aircraft of older design must comply with these noise emission standards as well, beginning no later than December 31, 1974.

However, no regulations have yet been adopted to require the retrofit of existing aircraft to bring them into compliance with these noise standards.

It has been over 2 years since the FAA first proposed a rule concerning the SAM—sound absorbent material—retrofit of old aircraft not in compliance with existing regulations for new aircraft. And it has been over 1½ years since the Environmental Protection Agency forwarded a draft rulemaking to the FAA for consideration.

Further delay in promulgation of this rule and the failure to apply these regulations to all types of aircraft, cannot be justified if the FAA and DOT are to comply with Congress directive in section 7(b) of the Noise Control Act of 1972 to regulate the abatement of aircraft noise "in order to afford present and future relief and protection to the public health and welfare."

The EPA, community groups around our Nation's airports, airport operators and the National Academy of Science all support prompt adoption of a retrofit rule. Today, almost 4 years after passage of the Noise Control Act into law, citizens near airports must still bear the burden of the din, and airport operators the burden of the nuisance suit.

SAM retrofit will provide meaningful relief to our citizens by bringing the noise levels of older jets down to those

of new wide-bodied aircraft. The use of sound absorbent material can reduce the number of persons exposed to unacceptable levels of noise by as much as 74 percent within 3 to 5 years. This does not include the effect of improved operating procedures, such as the Northwest technique, which would further reduce the number of individuals impacted. It has been estimated that in the Twin Cities in Minnesota, the number of people affected by the aircraft noise would be reduced from 52,000 to 14,000 if retrofit and better techniques were initiated.

The Aviation Trust Fund currently has a surplus of money which would adequately cover the cost of retrofitting our fleet. There need be no additional cost to consumers, only a better investment outlook for the money they have spent and continue to spend when they purchase their airplane tickets.

The legislation which I am introducing today has the following three basic provisions:

It instructs the FAA to promulgate the noise regulations it had proposed in 1975, with compliance within 5 years.

It provides that that portion of the foreign aircraft fleet necessary to sustain existing service to U.S. airports would have to comply with these regulations, and

It would make available grant assistance from the taxes which aviation users pay into the aviation trust fund to cover the cost of the SAM retrofit kits and installation.

I ask unanimous consent that the text of this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3503

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Aircraft Noise Reduction and Airport Protection Act of 1976."

Sec. 2. For purposes of this Act—

(1) the term "Administrator" means the Administrator of the Federal Aviation Administration;

(2) the term "noncomplying aircraft" means any civil subsonic turbojet powered aircraft which (A) is described in subsection (a) of section 3, and (B) does not comply with the noise standards prescribed for new subsonic aircraft in regulations issued by the Secretary acting through the Administrator (14 C.F.R. part 36), as such regulations were in effect in January 1, 1976;

(3) the term "operator" means any person who causes or authorizes the operation of an aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft;

(4) the term "replacement aircraft" means any civil subsonic turbojet powered aircraft which (A) has a maximum certificated take-off weight of seventy-five thousand pounds or more, and (B) on the date an agreement to purchase such aircraft is entered into such aircraft is designed to comply with the noise standards prescribed for new subsonic aircraft in regulations issued by the Secretary acting through the Administrator (14 C.F.R. part 36) as such regulations are in effect on such date;

(5) the term "retrofit" means the alteration of the engine or the engine nacelles of an aircraft with sound absorbent materials for the purpose of noise reduction, and in the

case of an aircraft which requires alteration of the engine as well as the nacelle in order to comply with regulations promulgated pursuant to section 3 of this Act, shall include the alteration of the minimum number of such spare engines as the Secretary deems necessary for the continued operation of such aircraft; and

(6) the term "Secretary" means the Secretary of Transportation.

Sec. 3. (a) The Administrator shall, in accordance with section 611 of the Federal Aviation Act of 1958 (49 U.S.C. 1431), promulgate regulations prescribing noise standards for the operation at any airport within the United States of—

(1) any civil subsonic turbojet powered aircraft which (A) has a maximum certificated takeoff weight of seventy-five thousand pounds or more, (B) is registered in the United States, and (C) has a standard airworthiness certificate issued pursuant to section 603(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1423(c)); and

(2) any civil subsonic turbojet powered aircraft which (A) has a maximum certificated takeoff weight of seventy-five thousand pounds or more, (B) is registered in a foreign country, and (C) if registered in the United States would be required to have a standard airworthiness certificate issued pursuant to section 603(c) of such Act.

(b) The regulations required to be promulgated pursuant to subsection (a) shall take effect within one hundred and twenty days after the date of enactment of this Act and shall include the following:

(1) A prohibition, beginning five years after the date of enactment of this Act, against the operation at any airport within the United States of any noncomplying aircraft to which such regulations apply.

(2) Requirements for such partial compliance at intervals prior to the last day of the five-year period beginning on the date of enactment of this Act as the Administrator deems necessary in order to carry out the purposes of this Act.

(3) Such other requirements as the Administrator deems necessary to carry out the purposes of this section.

Sec. 4. (a) For purposes of establishing eligibility to apply for a grant under section 5 to retrofit or replace a noncomplying aircraft, within one hundred and twenty days after the date of enactment of this Act, the Secretary shall determine and publish in the Federal Register a list which sets forth—

(1) for each operator of a noncomplying aircraft which is operated at an airport within the United States, the name of the operator of each such noncomplying aircraft on such date of enactment and the registration number of each such aircraft; and

(2) for each operator of a noncomplying aircraft which operated at an airport within the United States during 1975 and which is registered in any foreign country, the minimum number of such operator's noncomplying aircraft, by aircraft type, as listed pursuant to paragraph (1) of this section, which are necessary to maintain the same level of service in the United States by such operator with such noncomplying aircraft as was provided by such operator's noncomplying aircraft during 1975.

In any case for which more than one person claims to be the operator of any noncomplying aircraft, the Secretary shall determine the operator to whom to assign such aircraft, for the purposes of establishing such eligibility.

(b) (1) No person may apply for a grant to retrofit or replace a noncomplying aircraft under section 5 of this Act unless such noncomplying aircraft is set forth in the list required to be published pursuant to this section and such person's name is set forth in such list as the operator of such noncomplying aircraft.

(2) An operator of a noncomplying aircraft which is registered in a foreign country and which is published in the list in accordance with subsection (a) shall only be eligible to receive a grant for (A) the minimum number of such aircraft by type as specified by the Secretary pursuant to subsection (a) (2), and (B) with respect to such aircraft, for the retrofitting of such aircraft.

Sec. 5. (a) Any operator of a noncomplying aircraft who is eligible pursuant to section 4(b) for a grant to retrofit or replace any noncomplying aircraft may submit an application to the Secretary for such grant which shall be in such form as the Secretary may by regulation require. Such application shall—

(1) in the case of an application for a grant to retrofit any noncomplying aircraft—

(A) identify such noncomplying aircraft in a manner prescribed by the Secretary;

(B) set forth the price of purchasing the retrofit materials and the price of installing such materials; and

(C) provide such other information as the Secretary may by regulation require; and

(2) in the case of an application for a grant to be applied to the purchase of a replacement aircraft—

(A) identify the number of such noncomplying aircraft for which such operator is seeking a grant for the purpose of applying such grant to the purchase of such replacement aircraft;

(B) be submitted with a copy of the contractual agreement entered into by such operator for the purchase of such replacement aircraft; and

(C) provide such other information as the Secretary may by regulation require.

(b) (1) Within sixty days after the receipt of a grant application pursuant to subsection (a) of this section, the Secretary shall approve such application if he determines—

(A) in the case of an application to retrofit the noncomplying aircraft, that after such aircraft is retrofitted it will comply with the noise standards for new subsonic aircraft in regulations issued by the Secretary acting through the Administrator (14 C.F.R. part 36), as such regulations were in effect on January 1, 1976, and the cost of such retrofitting is reasonable; and

(B) in the case of an application for a grant to be applied to the purchase of a replacement aircraft, the amount of money requested in the application would be a reasonable amount to retrofit the noncomplying aircraft identified in such application if the operator of such noncomplying aircraft had submitted an application to retrofit such noncomplying aircraft.

(2) With respect to any noncomplying aircraft, the Secretary shall not approve more than one application for a grant under this section.

(c) The Secretary shall not approve any grant application under this section which would require any Federal funds to be paid—

(1) for the retrofitting of any noncomplying aircraft after (A) the last day of the five-year period beginning on the date of enactment of this Act, or (B) any date prior to the last day of such five-year period which the Secretary may by regulation prescribe in order to carry out the purposes of this Act;

(2) as part of the purchase price of a replacement aircraft (A) any part of which was paid prior to the date of enactment of this Act, or (B) if such grant application is submitted after (i) the last day of such five-year period, or (ii) any date prior to the last day of such five-year period which the Secretary may by regulation prescribe in order to carry out the purposes of this Act;

(3) which would be in excess of the purchase price of a replacement aircraft; or

(4) for the retrofitting or replacement of any non-complying aircraft after the last day of such five-year period.

Sec. 6. (a) Upon the approval of a grant application submitted by an operator pursuant to section 5, the Secretary shall enter into an agreement with such operator for the payment of the amount set forth in such grant application. Such agreement shall contain the following conditions:

(1) No part of the grant shall be used for any purpose other than as set forth and approved in the grant application and any part of such grant which the Secretary determines is not being so used shall be immediately repaid to the United States with interest.

(2) In the case of a grant agreement providing for the retrofitting of a noncomplying aircraft, the retrofitting will be accomplished (A) in a manner which is consistent with any applicable safety requirement, (B) within the time period as set forth in the grant application, and (C) in a manner so that after such aircraft is retrofitted it will comply with the noise standards for new subsonic aircraft in regulations issued by the Secretary acting through the Administrator (14 C.F.R. part 36), as such regulations were in effect on January 1, 1976.

(3) In the case of a grant agreement providing for Federal funds to be paid as part of the purchase price of a replacement aircraft, such replacement aircraft will comply (A) with any applicable safety requirement, and (B) will comply with the noise standards prescribed for new subsonic aircraft in regulations issued by the Secretary acting through the Administrator (14 C.F.R. part 36), as such regulations were in effect on the date on which such operator entered into an agreement to purchase such replacement aircraft.

(4) No noncomplying aircraft will be operated at an airport within the United States by such operator after the last day of the five-year period beginning on the date of enactment of this Act.

(5) Such other conditions as the Secretary deems necessary to carry out the purposes of this Act.

(b) If any operator who receives funds pursuant to a grant agreement entered into under this Act fails to comply with any condition set forth in such grant agreement, such operator shall immediately repay to the United States any funds received pursuant to such grant agreement, with interest.

(c) The Secretary shall only make payments pursuant to a grant agreement entered into under this section after he receives notification from the operator that such operator is liable for a payment which is eligible for reimbursement pursuant to such grant agreement.

Sec. 7. Notwithstanding any other provision of law, there is authorized to be appropriated out of the Airport and Airway Trust Fund to carry out the purposes of this Act sums not to exceed \$300,000,000 per fiscal year for each of the fiscal years 1977, 1978, 1979 and 1980. Sums authorized to be appropriated pursuant to this section shall remain available without fiscal year limitation until the last day of the five-year period beginning on the date of enactment of this Act.

By Mr. SCHWEIKER:

S. 3504. A bill to extend the boundary of the Tinicum National Environmental Center, and for other purposes. Referred to the Committee on Commerce.

Mr. SCHWEIKER. Mr. President, I introduce today legislation to expand the boundaries of Tinicum National Environmental Center, the sole surviving tidal marsh in Pennsylvania, located in Dela-

ware and Philadelphia Counties, 6 miles from downtown Philadelphia. This is identical to the legislation, introduced by my distinguished colleague, the Honorable ROBERT W. EDGAR, which passed the House May 19, 1976.

The Tinicum National Environmental Center, established by Public Law 92-326 on June 30, 1972, is a unique marsh area of great ecological importance to the highly congested and urbanized areas around it. That legislation had special significance in that it marked the creation of the first urban national park in the history of the Nation. Public Law 92-326 authorized \$2.5 million to acquire the 890 acres comprising the center.

The opportunity it provides for the millions of people living nearby to enjoy its beauty is unmatched. As a home for many varieties of wildlife and as a natural flood plain and natural waste water treatment environment, Tinicum Marsh plays a major role in the ecology of the Philadelphia area.

The legislation I introduce would extend the boundaries of the center by approximately 45 acres, to include the adjoining Folcroft landfill, and increase the authorization level to \$5.9 million. The additional money is needed to purchase the land within the authorized boundaries. It is vitally important, Mr. President, to include the Folcroft dump area in the center for the center's own protection: As a breeding ground for rats and a source of chemicals seeping into the marsh water, the dump represents a clear and serious threat to the surrounding marsh.

There is a great deal of citizen interest in this matter, and my office has been contacted by representatives of thousands of citizens who strongly support this action to preserve and strengthen the ecological integrity of Tinicum Marsh. Having strongly supported the creation of this important natural preserve in 1972, I now urge my colleagues to recognize the importance of following through on that major step by protecting the marsh against deterioration. I am confident the Senate will follow up the job we started in 1972 by including this tract in the Tinicum National Environmental Center.

I ask unanimous consent that an editorial from the Philadelphia Evening Bulletin be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Evening Bulletin, May 17, 1976]

PLACED PARK: A BOOM FOR TINICUM

A U.S. House committee has fortunately seen the need for including the old Folcroft landfill in the Tinicum National Environmental Center, which is taking shape as the nation's first urban national park.

Acting on urgings from Delaware County Congressman Robert W. Edgar, the House Merchant Marine and Fisheries Committee has voted to add the 40-acre landfill to the park, rather than allow it to loom as an intrusion over the Tinicum marshes. The full House and then the Senate, should uphold the committee's action.

The landfill—a 40-acre mound of trash and debris—was specifically, and unfortunately, excluded from the Tinicum park when it was approved by Congress in 1972.

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Adding the dump site now will not change the park's authorized size of 1,200 acres. That has always been an optimum, but not necessarily realizable, figure. The park's essential, core area of around 900 acres has been threatened by possible development of the landfill for commercial purposes.

In short, the Merchant Marine Committee has realigned the park's boundaries, not extended them. It is placing a suitably high priority on acquiring the landfill ahead of other, less critical parcels of marshland.

Congressman Edgar also wants to acquire two lagoons on the park's western edge, but acknowledges they will have to wait until more funds become available from public or private sources.

With an additional \$3.7 million the Ford Administration is supporting for the project, the longstanding dream of a unique, regional nature center in the Tinicum marshes can move ahead, the landfill included.

By Mr. BUCKLEY:

S. 3505. A bill to amend Section 121 of the Internal Revenue Code. Referred to the Committee on Finance.

Mr. BUCKLEY. Mr. President, I am today introducing legislation which would allow a taxpayer a one-time opportunity to sell his or her home without incurring tax liability up to \$60,000 of gain realized from the sale of the property. The primary beneficiary of this provision would be those individuals approaching retirement whose need for family-sized housing is reduced but who presently avoid selling because of the tax liability incurred from such a sale. This one-time exclusion would in no way affect the rollover provisions which allow for the sale of one house when another is purchased within a certain period of time.

More specifically, my proposed amendment to the Internal Revenue Code provides for a one-time, total exclusion from capital gains taxation when the taxpayer sells his principal place of residence. My provision, however, limits the exclusion to \$60,000, but that limitation is indexed hereafter to insure the original intent that middle-class, suburban homeowners should not have their principal asset taxed because they find themselves at that point in life when a substantial change in lifestyle is in order.

The bill which I am introducing today would simplify the present section 121 to provide for a straightforward \$60,000 exclusion, rather than the current method which provides certain minimum and inadequate relief from capital gains liability arising from the sale of one's principal place of residence.

Section 121 currently provides for a one-time exclusion of proceeds from the sale or exchange of the principal place of residence of a taxpayer over 65 years of age, providing that the property has been used as the principal place of residence for at least 5 years. The problem is that this tax benefit begins to be phased out as the sales price of the home exceeds \$20,000, a price now virtually unknown in real estate sales.

As I indicated above, the base figure of \$60,000 would be indexed to insure that the formula does not become out-of-date, as the figures in the present section 121 have. I have approached the problem of illusory gain due to inflation

in S. 987, my more generalized indexing proposal, in which the cost basis of all capital property would be adjusted to discount the consequences of all increases in the Consumer Price Index. But I feel that even those of my colleagues who have been reluctant to take this broader approach to the problem of taxing illusory capital gains will be constrained to support this more limited treatment, which, at the same time would benefit a substantial portion of the Nation's taxpayers.

It is ironic that a government which properly expresses so much concern for the problems of retired citizens should maintain a tax policy which taxes away a substantial portion of a person's savings which are represented in the form of a home. What just purpose does it serve to take these resources out of the hands of the people? All too frequently the Federal Government expresses its concern exclusively in the form of additional spending programs, when adjustments in the tax laws would achieve far more than can be realized by Federal spending.

My proposed change to section 121 contains provisions which would strictly limit its application. The exclusion is available only once to a taxpayer during his or her spouse's lifetime. However, the taxpayer would be free to exercise the exclusion at the time most advantageous to his own circumstances. Also, the \$60,000 ceiling on the amount of gain which can be excluded insures fair treatment with no undue advantage, while insuring that this Nation's most hard-pressed class of taxpayers, the middle class, will be given this one-time relief.

We in the Government should be doing our utmost to remove any lingering and artificial barriers to the disposition of one's principal place of residence in order that we might encourage senior citizens—and others—to make home ownership decisions on the basis of genuine need and not of tax considerations.

ADDITIONAL COSPONSORS

S. 3425

At the request of Mr. NELSON, the Senator from Connecticut (Mr. RIBICOFF), the Senator from Colorado (Mr. HASKELL), the Senator from New York (Mr. BUCKLEY), and the Senator from New Jersey (Mr. CASE) were added as cosponsors of S. 3425, to provide for comprehensive fish and wildlife studies.

SENATE JOINT RESOLUTION 186

At the request of Mr. BROCK, the Senator from Arizona (Mr. FANNIN) was added as a cosponsor of Senate Joint Resolution 186, to clarify and reaffirm Government purchasing policies.

My proposed change to section 121 contains provisions which would strictly limit its application. The exclusion is available only once to a taxpayer during his or her spouse's lifetime. However, the taxpayer would be free to exercise the exclusion at the time most advantageous to his own circumstances. Also, the \$60,000 ceiling on the amount of gain which can be excluded insures fair treatment with no undue advantage, while in-

sure that this Nation's most hard-pressed class of taxpayers, the middle class, will be given this one-time relief.

We in the Government should be doing our utmost to remove any lingering and artificial barriers to the disposition of one's principal place of residence in order that we might encourage senior citizens—and others—to make home ownership decisions on the basis of genuine need and not of tax considerations.

AMENDMENTS SUBMITTED FOR PRINTING

HEALTH MAINTENANCE ORGANIZATION AMENDMENTS—S. 1926

AMENDMENTS NOS. 1710 AND 1711

(Ordered to be printed and to lie on the table.)

CHURCH-KENNEDY AMENDMENT TO S. 1926

Mr. KENNEDY. Mr. President, on behalf of Senator CHURCH and myself, I submit the home health amendment. This measure has two provisions.

First, it would extend through fiscal 1977 the authority under the Health Revenue Sharing Act—Public Law 94-63—to finance the initial costs of establishing and operating home health agencies and to expand services of existing agencies.

Second, it would authorize funding through fiscal 1977 to train professional and paraprofessional personnel for home health agencies.

In recent years institutional charges have increased substantially. A stay in the hospital, for example, may now cost \$150 to \$200 a day—depending upon the region of the country where a patient is hospitalized.

The overwhelming proportion of Medicare costs is for hospitalization. In fact, about 96 percent of all reimbursement under the part A hospital insurance program is for hospitalization.

Home health care, on the other hand, accounts for less than 1 percent of Medicare reimbursement.

Hearings conducted by the Senate Committee on Aging have made it abundantly clear that many health conditions can be treated more effectively and economically at home. This is particularly true when highly specialized services are not required.

Most older Americans would prefer to remain at home in familiar surroundings if at all possible. And they can if effective alternatives to institutionalization are available.

But if this is to become a reality, home health services and facilities must be increased. In addition, it is vitally important that there be trained personnel to deliver services to elderly persons.

The need for home care is especially acute in rural areas where institutional facilities may be limited or nonexistent.

Many rural areas, though, have no home health agencies. And those that do usually have agencies equipped to provide only limited service. About one-half of the agencies certified under Medicare offer nursing plus one other service—typically physical therapy. Yet, a sizeable proportion of older Americans reside on farms or in small communities. And

their need for home health services is great.

The Church-Kennedy amendment would help make it possible for home health agencies to expand their services. Moreover, it can help target these services to areas where the need is the greatest.

Mr. President, I urge the adoption of the Church-Kennedy amendment.

THE ANTITRUST IMPROVEMENTS ACT OF 1976—H.R. 8532

AMENDMENT NO. 1712

(Ordered to be printed.)

Mr. ALLEN proposed an amendment in the nature of a substitute to amendment No. 1701 in the nature of a substitute to the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes.

AMENDMENT NO. 1713

(Ordered to be printed and to lie on the table.)

EXPLANATION OF AMENDMENT NO. 1 TO SECTION 4C (B) (2)

Mr. HRUSKA. Mr. President, the purpose of the proposed amendment is to eliminate as wholly unnecessary and punitive the provision that trebles the damages awarded in parens patriae actions.

The antitrust laws currently allow for treble damages in private actions, in part to provide for an incentive to sue and thus further to provide for a measure of deterrence. This allowance is appropriate for private actions where the plaintiff might otherwise decide that the costs of suit are not worth risking recovery of single damages only. Where a public body is suing, however, there are virtually no risks because of the public resources available to a State. The riskless nature of parens patriae suits will be underscored when the recent Senate bill appropriating Federal funds for State antitrust enforcement becomes law.

Accordingly, an allowance for treble damages in parens patriae actions becomes a purely punitive measure, providing for a form of civil penalties that bears no relationship whatsoever to the nature or seriousness of the violation. It makes absolutely no sense in light of the recently enacted bill increasing civil and criminal penalties for antitrust violations.

AMENDMENT NO. 1714

(Ordered to be printed and to lie on the table.)

EXPLANATION OF AMENDMENT NO. 2 TO SECTION 4 (B) (2)

Mr. HRUSKA. Mr. President, the purpose of the proposed amendment is to discourage States from bringing groundless suits under the Act by providing that the costs of suit be charged against the State in the event of an unsuccessful action.

As currently drafted, the parens patriae provisions do nothing to discourage—and in fact encourage—black-mail suits that are frivolous, and that are designed to extort settlement funds from defendants. As experience with rule 23 demonstrates—and as States will no

doubt appreciate—defendants cannot today afford to defend even the most frivolous class action suits on the merits because of the opened nature of the potential liability. These defendants much prefer to settle for a limited sum certain than run the risk, however remote, of having to pay an indeterminate sum in the future. Indeed, no class action under amended rule 23 has ever gone to trial; each has been settled. Title IV suits will be brought much more often than rule 23 suits, of course, because of the bill's elimination of the costs of individual notice—which the States could afford to pay in any event—the ability of States to hire outside counsel on a contingent fee basis, and, finally, the added political pressures that will face State attorneys general.

In these circumstances, it is sheer folly to encourage the bringing of suits which entail absolutely no risk to a public body with public funds no matter how frivolous the action is. Charging costs of suit, including attorneys' fees, to the States in the event of unsuccessful action is thus absolutely essential to provide some measure of balance. Even with the proposed amendment, of course, the cards are stacked in favor of bringing groundless actions, because of the realities which dictate settlement and of the public resources available to the State to pay the costs of suit.

AMENDMENT NO. 1715

(Ordered to be printed and to lie on the table.)

EXPLANATION OF PROPOSED AMENDMENT TO SECTION 4C (B) (1)

Mr. HRUSKA. Mr. President, the purpose of the proposed amendment is to make the notice specification of subsection (b) consistent with the due process requirements.

The actions the States are authorized by title IV to bring on behalf of persons will finally adjudicate whatever private rights those persons have under section 4 of the Clayton Act. Title IV thus permits those persons to "opt-out" of the State action if they do not want their rights bound thereby. The Eisen III decision of the Supreme Court, however, indicates that the notice by publication provided for in title IV will be inadequate to preserve these private rights if persons who will be bound by the State action can be identified and given individual notice by mail. This requirement for individual notice where practicable is expensive, and indeed is one of the reasons for permitting the States to finance the cost with public funds. Quite obviously, if the States are authorized to bring suit, however, there is no need to eliminate the notice requirement for fear that it cannot be paid by individual consumers.

AMENDMENT NO. 1716

(Ordered to be printed and to lie on the table.)

EXPLANATION OF PROPOSED AMENDMENT TO SECTION 4C (B) (1)

Mr. HRUSKA. Mr. President, the purpose of the amendment is to limit title IV to the collusive price-fixing antitrust violations that are cited by its proponents as justifying enactment. If adopted, the amendment would thus preclude

the obviously unfair and unwise assessment of massive penalty awards in circumstances where the law is uncertain either because the applicable standards are evolving, or because a court is called upon to make close judgment calls that involve careful judicial balancing under the rule of reason.

The proponents of title IV have supported it as a means of collecting from defendants their "ill-gotten gains" obtained by price fixing that might otherwise go unpunished—and thus under-terred—because of the difficulties of bringing private class actions under rule 23. Although the assumption underlying this argument—that price fixing today goes unpunished—is questionable, the bill extends far beyond price fixing to circumstances where the law is very uncertain.

AMENDMENT NO. 1717

(Ordered to be printed and to lie on the table.)

EXPLANATION OF PROPOSED AMENDMENT TO SECTION 304

Mr. HRUSKA. Mr. President, the purpose of this proposed amendment is to provide a court with discretion in determining whether attorneys' fees should be awarded to a successful plaintiff in private injunction cases.

Although an award of attorneys' fees may be appropriate in an injunction case because of the ambiguity of the term "substantially prevails" in section 304, and because of the wide variety of factual situations which may arise, there should be no mandatory requirement of this nature. Instead, the court should be given discretion to award attorneys' fees in private injunction cases when the circumstances so warrant.

AMENDMENT NO. 1718

(Ordered to be printed and to lie on the table.)

EXPLANATION OF PROPOSED AMENDMENT TO SECTION 4F

Mr. HRUSKA. Mr. President, the purpose of the proposed amendment is to make it clear that the attorneys' fees which may be paid by States to any outside counsel retained by them may not be made contingent on the success of the action, and must be determined on the basis of actual time spent—not on the basis of a percentage of the total recovery, as in typical contingent fee arrangements.

In H.R. 8532, the counterpart legislation to title IV, the House has already excluded those retained on a contingent fee basis from the attorneys who may bring *parens patriae* suits.

Courts have in the past approved contingent fee arrangements which award attorneys a percentage of the total recovery, and which have often resulted in fees that run into the millions of dollars. The reason for awarding such astronomical fees is to provide incentive for the private bar to assume the substantial risk of prosecuting actions involving numerous small claims, which, if unsuccessful, can leave the attorneys with no compensation whatsoever.

There will, however, be little risk in connection with actions brought by the States, which will be paying their legal

staffs in any event, and which can afford to pay outside counsel on an hourly basis regardless of the outcome of the action. Indeed, elimination of these risks of suit is a principal objective of this legislation, which is designed to provide public financing of costs of suits, such as the notice expense, which can sometimes bar private suits. Accordingly, there is no justification for permitting contingent fee arrangements, which would result in windfalls to attorneys, not compensation for assumption of risk, and which would significantly reduce the amount of the damage fund that would be available to the injured consumers themselves. It is disingenuous, to say the least, to propose legislation which is supposed to make it easier for consumers to seek damages for antitrust injury, but which also channels a large percentage of damage awards running into millions of dollars to private attorneys.

AMENDMENT NO. 1719

(Ordered to be printed and to lie on the table.)

PROPOSED AMENDMENTS TO SEC. 7A.(d) AND (g)

Mr. HRUSKA. Mr. President, the purpose of the proposed amendment to section 7(a)(d) is to eliminate the automatic stay provision, defining a standard for preliminary injunctions—and temporary restraining orders—applicable to actions by the Justice Department which will be harmonious with the standard applicable to actions by the Federal Trade Commission under 15 U.S.C. section 53(b).

The bill in its present form would give the Government the right to obtain a stay automatically merely by filing an action. Under existing law, in order to secure a preliminary injunction the Justice Department must show, at a minimum, the probability of success on the merits. To justify the novel idea of an automatic stay, it has been suggested that the present standard can sometimes be difficult for the Government to meet and that in some situations the Government has been required in effect to prove its entire case at the outset of the action.

Especially since it is universally agreed that mergers and acquisitions are not inherently suspect activities, and that there is no underlying assumption that they are bad, such an automatic stay without any showing with respect to probable illegality is alien to traditional standards of justice. In his testimony at the hearings the Chairman of the FTC recognized this fact, and opposed the idea of an automatic stay:

I think we all recognize that there may be instances in which mergers are economically desirable. The merger law quite properly puts the burden on the government to challenge by court or administrative proceedings those mergers which appear to threaten competition. If we can get the information that we need to make the determination as to whether a particular merger should be opposed, we think the burden should be on us to make the challenge. Rather than mandating a court, upon application of the enforcement agency, to enter an order prohibiting consummation of a merger pending final judgment, the law should permit a court to require a showing by the government of probable illegality. Also, the court should have the discretion to permit mergers to take place

upon adequate showing that the acquiring company would remain a sufficiently distinct entity to permit ready divestiture if later ordered. Senate S. 1284 Hearings at 71.

There is a real showing as far, if at all, the Government may be failing to get relief which it should get under present law. The Chairman of the FTC testified at the hearings that the standard presently applicable to the FTC is satisfactory. In addition, the Justice Department was recently given authority to appeal the denial of preliminary stays in antitrust actions to the appropriate Federal courts of appeal immediately. The denial of a preliminary stay by the district court is thus no longer the irrevocable step that it used to be; therefore, district courts are likely to be more favorably disposed to grant applications for preliminary stays than they have heretofore been.

The proposed amendment nevertheless strengthens the hand of the Justice Department in seeking preliminary relief, by eliminating the inflexible requirement that the Government demonstrate a substantial probability of success on the merits, independently of other factors. The language for doing so is borrowed from the statutory standard governing actions for such relief brought by the Federal Trade Commission, which the FTC Chairman testified is satisfactory. The statutory standard for the FTC is that preliminary relief may be granted, without bond, if the court determines that "weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest" 15 U.S.C. section 53(b). The proposed amendment applies a similar standard to actions filed by the Justice Department.

The amendment would consolidate in section 7A.(d) all provisions governing the nature of the relief which the district court may order *pendente lite*. The proposed amendment gives the district court discretion to fashion appropriate relief to meet the legitimate needs of both parties in each particular case. It would give the Government the right to obtain a hold separate order—a power which it does not now have by statute—but only after demonstrating to a court that such an order is necessary and appropriate in the context of the transaction.

The proposed amendment would eliminate the remaining elements of section 7A.(g) including: First, the residual remnants of provisions formerly in the original bill for mandatory divestiture at a previously established price with segregation of assets and escrow of profits; second, an administratively difficult, and now pointless, provision requiring the district court to "establish" the purchase price of stock or assets; third, a probably innocuous but unnecessary requirement that any divestitures which are ordered be accomplished expeditiously; and fourth, the incomprehensible—and therefore extremely dangerous—requirement that "to the extent practicable the court shall deprive the violator of all benefits of the violation including tax benefits." These provisions are pointless, meaningless, or both, and should be stricken from the bill.

AMENDMENT NO. 1720

(Ordered to be printed and to lie on the table.)

EXPLANATION OF PROPOSED AMENDMENT TO SECTION 7A(b)(2) AND (3)

Mr. HRUSKA. Mr. President, the purpose of this proposed amendment to section 7A(b)(2) is twofold.

First, it would eliminate the authority of the Federal Trade Commission to subject virtually any acquisition to the notification and waiting period requirements of the proposed legislation even though the dollar amount involved was less than the statutory minimum. The existing merger notification program, which the FTC has found to be successful, would, of course, still be available to that agency if section 7A(b)(2) is deleted, as was noted by Chairman Engman in his testimony—Senate S. 1234 hearings at 72.

Second, the proposed addition to section 7A(b)(3)—renumbered (b)(2)—requires the Federal Trade Commission and the Assistant Attorney General to keep notification information confidential, except that appropriate congressional inquiry is permitted. The confidentiality provision will insure that respondents are not prejudiced by submitting confidential information concerning a proposed merger or acquisition. The necessity for a confidentiality provision was emphasized in his testimony on May 7, 1975 by the Assistant Attorney General in charge of the Antitrust Division, Thomas E. Kauper:

Much of the information submitted would undoubtedly be commercial business information which might be exempt from disclosure under the Freedom of Information Act. Some of the material would seem to fall within the investigatory exemption to that Act, at least during the waiting period. But what of the notification itself? Obviously if the companies are at a point where public disclosure is required under the securities laws this is an academic point, but this may not always be the case. And there may be strong reasons for preserving the confidentiality of the notification. In any event the bill might better deal directly with the confidentiality issues rather than leave them to future litigation and uncertainty.—Senate S. 1234 hearings, at 98.

The new sentence dealing with the sufficiency of compliance with the section's reporting requirements is aimed at minimizing unnecessary burden on reporting persons, especially where the form in which their records are maintained might make conformity with the letter of such requirements extremely difficult. The need to avoid overly technical construction of the reporting requirements is key, given the tight time schedules for reporting.

AMENDMENT NO. 1721

(Ordered to be printed and to lie on the table.)

EXPLANATION OF PROPOSED AMENDMENTS TO SECTIONS 7A, (b)(1) AND (c)(2)

Mr. HRUSKA. Mr. President, the purpose of the proposed amendments to section 7A, (b)(1) and (c)(2) is to place reasonable limitations on the length of any delay which the Commission or Department of Justice can impose upon the parties. The amendment would stay con-

summation of covered acquisitions for 15 days and, upon a showing that, despite diligent efforts, the Government authorities were unable to complete their analysis of the contemplated acquisition, would permit the Government authorities to obtain an additional delay of up to 15 days from receipt of any additional information requested.

Assistant Attorney General Kauper testified that failing to limit an extension of the delay period available to enforcement agencies seeking to review a contemplated acquisition would permit those agencies virtually "unbridled discretion to delay"—Senate S. 1234 hearings at 96. Although revised, the present draft of the bill in effect gives governmental agencies a 75-day or longer delay period at their discretion.

The proposed amendment places a reasonable requirement of showing a necessity for an additional delay period, and leaves the duration of that additional delay period, up to 15 days, in the district court's discretion. Without such a limitation, governmental agencies could place acquisitions covered by this legislation in jeopardy because of the automatic right of the Government to delay the acquisition for a 2½-month period. Additionally, a discretionary right to extend the period, without any necessary demonstration of need on the part of governmental agencies, would substantially remove the incentive for the agency to complete its review as rapidly as possible, an incentive whose importance was undiscovered by Assistant Attorney General Kauper:

Moreover, if a merger is to be held up by virtue of unilateral action of the enforcement agencies, there should be an incentive for the agencies to proceed with their evaluation as rapidly as possible.—Senate S. 1234 hearings at 97.

AMENDMENT NO. 1722

(Ordered to be printed and to lie on the table.)

EXPLANATION OF PROPOSED AMENDMENT TO SECTION 7(A), (b)(4)

Mr. HRUSKA. Mr. President, the first purpose of the proposed amendments to section 7A(b)(4) is to make clear that the enumerated classes of exception, (i) through (xi) in the proposed amendments, are statutory and thus require no implementing regulations by the Federal Trade Commission. The FTC is given the authority in (xii) to define by regulation further classes of exceptions.

The second purpose of the proposed amendment is to codify the present FTC reporting requirement for tender offers. S. 1234 in its present form wholly fails to address itself to the special requirements of tender offers or to mesh with the Williams Act of 1968, Securities Exchange Act section 14(d)(5), 15 U.S.C. section 78n(5), which provides that:

Securities deposited pursuant to a tender offer or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time until the expiration of seven days after the time definitive copies of the offer or request or invitation are first published or sent or given to security holders, and at any time after sixty days from the date of the original tender offer or request

or invitation, except as the Commission may otherwise prescribe by rules, regulations, or order as necessary or appropriate in the public interest or for the protection of investors.

The bill's failure to deal clearly and effectively with the important tender offer issue was noted by Assistant Attorney General Kauper who emphasized:

There is no inherent reason to suspect such offers, which are in and of themselves purely neutral facts. They may be procompetitive in some circumstances.—Senate S. 1234 Hearings, at 97.

The third purpose of the proposed amendment is to eliminate the various rulemaking authorities which section 7A(b)(4)(A) would grant the FTC. These authorities are either appropriately dealt with in other sections, or are so broad and general as to threaten to undermine an otherwise carefully structured statutory scheme.

AMENDMENT NO. 1723

(Ordered to be printed and to lie on the table.)

EXPLANATION OF PROPOSED AMENDMENT TO SECTION 301

Mr. HRUSKA. Mr. President, the purpose of this proposed amendment is to retain the present jurisdictional reach of the Robinson-Patman Act and section 3 of the Clayton Act to activities in the flow of interstate commerce. In addition, this proposed amendment would retain the jurisdictional requirement in section 7 of the Clayton Act that both the acquiring and acquired companies be engaged in commerce.

(a) Robinson-Patman Act.

The Supreme Court has recently defined the jurisdictional scope of the Robinson-Patman Act as requiring at least one of the two transactions involving a discrimination to cross State lines. *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186 (1974). Congress should not expand the reach of the act to cover essentially intrastate conduct at a time when its provisions have been the subject of persuasive criticism.

Economists are becoming increasingly convinced that the act is anticompetitive. Indeed, one of the leading opponents of the present act is the Department of Justice, which has reportedly submitted a proposed bill to Congress which would substantially restrict the applicability of the act. The Department's criticisms were recently aired by Mr. Joseph Sims, Special Assistant to the Assistant Attorney General for Antitrust. He testified before the Subcommittee on Activities of Regulatory Agencies of the House Committee on Small Business that the Robinson-Patman Act has hurt both the consumer by discouraging lower prices, and those it was supposed to preserve, the small entrepreneur, by—

... reinforcing oligopoly pricing, by making entry against those with entrenched market positions more difficult, and by preventing businesses, small as well as large, from tailoring their pricing structure to reflect the demands of the market in which they do business. Indeed, the Robinson-Patman Act may in some instances have actually enhanced the position of large corporations by encouraging vertical integration and the use of private brands.—Testimony, page 10.

In the face of such cogent criticism, instead of expanding the reach of its provisions, Congress should rather undertake a thorough reevaluation of the Robinson-Patman Act.

(b) Section 3 of the Clayton Act.

There is no apparent reasons for expanding the scope of section 3 of the Clayton Act to cover activities which only affect intrastate commerce. Such an amendment would encourage predominantly local disputes to be litigated in the Federal courts at a time when such courts are becoming increasingly overcrowded. There has been no indication that the commerce limitation in section 3 has created any enforcement problems, particularly since the practices which violate section 3 also violate section 1 of the Sherman Act and section 5 of the Federal Trade Commission Act, both of which cover practices to the full extent of the Federal commerce power.

The absence of any need for such expanded Federal jurisdiction is underscored by the vigorous antitrust programs being undertaken in a large number of the States—with the active encouragement of the Federal enforcement agencies—to deal with local restraints on a local level. The enactment of section 301 would give rise to serious Federal/State jurisdictional questions with respect to antitrust policy and enforcement. The same acts would be subject to differing and possibly conflicting legal standards. Moreover, the extensive efforts of many States to regulate conduct solely within their boundaries might be thwarted by enactment of section 301.¹

(c) Section 7 of the Clayton Act.

There exists no apparent reason for expanding the applicability of section 7 to corporations whose activities only affect intrastate commerce. The Supreme Court has very recently determined that the "drastic prohibitions" of section 7 were not intended to reach all corporations engaged in activities subject to the Federal commerce power. *United States v. American Building Maintenance Indus.*, 1975 Trade Cas. paragraph 60,365 at 66,551 (1975). Indeed, the legislators who amended section 7 in 1950 made it clear that the provision would not prevent "any local enterprise in a small town from buying up another local enterprise in the same town." Senate Report No. 1775, reported in 2 U.S.C. Congressional Service 4293, 4296 (2d sess. 1950).

Nothing has developed since 1950 which would warrant a change in the jurisdictional scope of section 7 of the Clayton Act. As with section 3 of the Clayton Act, there appears no valid reason for further burdening the Federal courts with local controversies.

Mr. President, I ask unanimous consent that the amendment be printed in the RECORD.

¹Section 301 would also enlarge the jurisdictional scope of Section 6 of the Sherman Act, providing for forfeiture of property which is the subject of a violation of Section 1 of the Sherman Act. Section 6 has rarely, if ever, been invoked by the Department of Justice. Here too, we are unaware of any need for increasing the jurisdictional reach of this remedy.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 1723

Section 301 should be deleted in its entirety by striking lines 2-25 on page 21; and lines 1-14 on page 22.

AMENDMENT No. 1724

(Ordered to be printed and to lie on the table.)

EXPLANATION OF PROPOSED DELETION OF TITLE V

Mr. HRUSKA. Mr. President, the undesirable features of Title V have been extensively dealt with and need not be repeated here. They include massive uncertainties and dislocations to the capital market and to the efficient operation of a truly competitive free enterprise system; the lack of any real showing of any inadequacy of the Government's present enforcement authority in merger cases; and the mythical nature of the so-called merger problem.

I ask unanimous consent that the text of the amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 1724

Delete Title V beginning on page 32, line 21 through page 43, line 24.

AMENDMENT No. 1725

(Ordered to be printed and to lie on the table.)

EXPLANATION OF PROPOSED AMENDMENT TO SECTION 7A.(a)

Mr. HRUSKA. Mr. President, the purpose of the proposed amendment is to substitute the present FTC premerger notification standards for the lower dollar amounts specified in title V and preserve the FTC's meaningful distinction between manufacturing and nonmanufacturing companies, that is, looking to assets, rather than sales, of nonmanufacturing companies being acquired, so as to exclude small companies dealing in expensive commodities.

The committee print of July 28, 1975— at page 62, lines 6 through 12—requires reporting of transactions where:

(3) The combined total assets or annual net sales of the acquiring person or persons and the person or persons the stock or assets of which is being acquired are in excess of \$10,000,000; Provided, that both the acquiring person or persons and the person or persons the stock or assets of which is being acquired have total assets or annual net sales in excess of \$10,000,000.

This coverage, in effect, of \$20 million transactions reaches even more acquisitions and mergers than the \$100 million minimum in the March 21, 1975, version of the bill which was criticized as too inclusive by both the Justice Department and the Federal Trade Commission. Testifying on May 7, 1975, before the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, Federal Trade Commission Chairman Lewis A. Engman stated:

If we had to conduct full investigation of all mergers exceeding the \$100 million assets or sales test that is contained in the bill, the fruits of our efforts might not be worth the cost. Our own pre-merger notification

program sets higher limits of \$250 million of assets or sales and appears to be satisfactory for purposes of getting basic information on large mergers. (Hearings on S. 1284 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary, 94th Cong., 1st Sess. (1975) ("Senate S. 1284 Hearings") at 71-72.)

Indeed, the committee print's coverage of \$20 million transactions may well be inadvertent because, as presently drafted, section 7A.(a) (1) and (2)—page 61, lines 20 through 25, and page 62, lines 1 through 5—defining the bill's coverage of transactions where either the acquiring or the acquired party has sales or assets in excess of \$100,000,000 is surplusage—wholly subsumed in section 7A.(a) (3).

Like the present FTC premerger notification program, the proposed amendment makes clear that the waiting period is intended to apply only to transactions involving \$10,000,000 or more in sales or assets, not to smaller transactions where a company having sales or assets in excess of \$10,000,000 disposes of a portion of its stock or assets. Thus, the sale of equipment or machinery by one large company to another would not be subject to the waiting period unless that sales involved \$10,000,000 or more. The exception provided in section (b) (4) for transactions involving "goods or realty transferred in the ordinary course of business" does not reach this specific problem. The standard of "ordinary course of business" is general and vague and could only be relied on at the peril of being subjected to a \$10,000 per day penalty for noncompliance if the Commission or the Assistant Attorney General took the view that such a transaction was not an "ordinary" one.

The proposed amendment makes a distinction between manufacturing and nonmanufacturing companies by stating that in the case of nonmanufacturing companies, only the assets are to be taken into account in determining whether the Bill would apply. This language recognizes the fact that even a small nonmanufacturing company normally has relatively large dollar sales volume. The acquisition of such a company would not normally have a material effect on competition. The amendment follows the distinction made by the Federal Trade Commission between manufacturing and nonmanufacturing acquisitions when the Commission revised its merger notification program after 5 years of experience.

I ask unanimous consent that text of the amendment be printed at this point of the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 1725

Delete the text at page 33, lines 11-23, and substitute therefor the following:

"(1) stock or assets of a manufacturing company with sales or assets of \$10 million or more is or are being acquired and the combined sales or assets of the acquiring and acquired persons exceed \$250 million; or

"(2) stock or assets of a non-manufacturing company with assets of \$10 million or more is or are being acquired and the com-

combined sales or assets of the acquiring and acquired persons exceed \$250 million."

AMENDMENT NO. 1726

(Ordered to be printed and to lie on the table.)

EXPLANATION OF PROPOSED AMENDMENT TO SECTION 303

Mr. HRUSKA. Mr. President, the purpose of this proposed amendment is to preserve the present functions of the executive and judiciary in their control of the conduct of foreign relations and application of international law respectively.

Section 303 appears to undercut the doctrines of sovereign immunity and act of state, and disregards the general considerations of comity which are traditionally used in deciding such issues. Permitting, in effect, a default judgment for failure to make discovery of furnish evidence which is forbidden by foreign law, it encroaches on the conduct of foreign relations, which is the province of the executive and not a matter for the judiciary. Moreover, section 303 may unconstitutionally permit a judgment which conflicts with the foreign policy of the United States, or violates international law.

The amendment made in committee, which appears to offer a "good faith effort to comply" exception to the provision's mandate actually does little to mitigate the intrusiveness of the section. It merely says that when a party's employee or subsidiary is not subject to the jurisdiction of the court and has control of the material, the material need not be produced. But, of course, most of the time a foreign employee or subsidiary will officially be subject to the court's jurisdiction as an element of the party, as well as subject to foreign jurisdiction. The conflict will still be present in the vast majority of cases.

Courts faced with the problems addressed by section 303 have arrived at practical solutions based upon a balancing of conflicting interests. Section 303 would overrule—perhaps unconstitutionally—decisions prohibiting a court from dismissing a party's claim or defenses for nonproduction of evidence or failure to testify when it would result in criminal liability under foreign law, see *Societe Internationale v. Rogers*, 357 U.S. 197 (1958), or some other substantial hardship such as revocation of a license to do business in a foreign country, see *United States v. First Nat'l City Bank*, 396 F. 2d 897 (2d Cir. 1968). There is no apparent reason for changing such limited exceptions, developed through years of judicial experience. Foreign and multinational litigants—including U.S. corporations operating overseas—should not be required to risk criminal liability or catastrophic losses in other countries in order to prosecute or defend claims effectively in Federal courts.

Section 303 would also make a party responsible for the failure of any person "in privity" with him to comply with a court order. The concept of privity is a very broad one; it goes substantially beyond control, and for this reason is inappropriate in this legislation.

NOTICE OF HEARING BY THE SUBCOMMITTEE ON ENERGY RESEARCH AND WATER RESOURCES

Mr. METCALF. Mr. President, on behalf of the Senator from Idaho (Mr. CHURCH), I wish to announce, for the information of the Senate and the public, the scheduling of a public hearing before the Energy Research and Water Resources Subcommittee of the Senate Committee on Interior and Insular Affairs.

The hearing is scheduled for June 7, at 10 a.m., in room 3110 of the Dirksen Office Building. Testimony is invited regarding S. 3394, a bill to authorize engineering investigation, stabilization, and rehabilitation of the Leadville Mine drainage tunnel in the State of Colorado.

For further information regarding the hearing, you may wish to contact Mr. Russell Brown of the subcommittee staff, on extension 41076. Those wishing to testify or who wish to submit a written statement for the hearing record, should write to the Energy Research and Water Resources Subcommittee, room 3206, Dirksen Senate Office Building, Washington, D.C. 20510.

NOTICE OF HEARING BY THE SUBCOMMITTEE ON ENERGY RESEARCH AND WATER RESOURCES

Mr. METCALF. Mr. President, on behalf of the Senator from Idaho (Mr. CHURCH), I wish to announce, for the information of the Senate and the public, the scheduling of a public hearing before the Energy Research and Water Resources Subcommittee of the Senate Committee on Interior and Insular Affairs.

The hearing is scheduled for June 15, beginning at 10 a.m., in room 3110 of the Dirksen Senate Office Building. Testimony is invited regarding two measures which are presently before the subcommittee. The bills are: S. 2194, to authorize the McGee Creek Reclamation project and H.R. 6622, to provide for the repair of the Del City Aqueduct both in the State of Oklahoma.

For further information regarding the hearing you may wish to contact Mr. Russell Brown of the subcommittee staff on extension 41076. Those wishing to testify or who wish to submit a written statement for the hearing record, should write to the Energy Research and Water Resources Subcommittee, room 3206, Dirksen Senate Office Building, Washington, D.C. 20510.

ANNOUNCEMENT OF HEARINGS

Mr. PROXMIRE. Mr. President, on Friday, June 4, the Committee on Banking, Housing and Urban Affairs will hold hearings on S. 1907, a bill to provide for U.S. participation in the recently negotiated OECD Financial Support Fund. The \$25 billion fund is an outgrowth of a proposal by Secretary of State Kissinger in the fall of 1974 to assist the industrialized countries of the world in meeting the financial and economic burdens arising from oil-induced balance-of-payments deficits. Legislation authorizing U.S. participation in the Fund was re-

ported by the Foreign Relations Committee on April 9 and subsequently referred to the Banking Committee.

Among the matters which will be explored are such issues as the following: First, have the conditions which gave rise to the proposal changed so that the need for it no longer exists, that is, is the Financial Support Fund still necessary in light of declining, rather than rising, oil-induced balance-of-payments deficits among the OECD countries; second, will the Fund, if activated, constitute, as has been charged, a bailout for multinational banks; third, will the Fund's existence tend to diminish multinational bank prudence in the making of foreign loans; fourth, will the existence of the fund increase OPEC's latitude to raise oil prices by relieving it of responsibility for the adverse economic and financial consequences of further oil price increases; fifth, why is the Fund needed in light of the International Monetary Fund, the International Monetary Fund's special oil facility, and the European Loan Fund; and sixth, are there adequate arrangements under the Fund to insure that loan recipients make necessary economic and financial adjustments to restore their balance-of-payments positions?

The hearings will begin at 10 a.m., in room 5302 of the Dirksen Senate Office Building. Interested persons should contact Stanley J. Marcuss, counsel to the International Finance Subcommittee, at 202-224-8813.

ADDITIONAL STATEMENTS

A PLAN OF ACTION FOR REGULATORY REFORM

Mr. WEICKER. Mr. President, today I join Senators PERCY and ROBERT BYRD in cosponsoring S. 2812, the Regulatory Reform Act of 1976. Government regulation is a factor which influences the life of every American citizen. It has grown and developed over the life of our Nation. The principles underlying Government regulation are basic to our democratic policies—to preserve and promote a high quality of life for our citizenry and to maintain the free enterprise economy through competition.

Over the years, as the quality of American life became more complex and our economy continued to grow by leaps and bounds, so did Government. Not too long ago the answer to every problem was the creation of still another independent agency or commission. The responsibility for these simplistic responses to real problems is shared equally by Presidents and legislators alike.

One cannot deny the sincerity of those who went before us; however, the upshot of these answers to problems has been overregulation, burdensome paperwork, duplication of effort, and higher costs to consumers and business. The result of these earstwhile efforts is perhaps best described in a letter which I received from Dr. John H. Heller of the New England Institute which I ask unanimous consent to have printed in the Record at this point.

There being no objection, the letter was ordered to be printed in the Record, as follows:

NEW ENGLAND INSTITUTE, INC.,
Ridgefield, Conn., February 5, 1976.

Senator LOWELL P. WEICKER, Jr.,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR: I have marked this letter
Personal in the hope you will see it yourself.

Twenty-one years ago, this Institution had
to report to one agency, the A.E.C. Today,
we have to report to no less than fifty State
and Federal Agencies. This preoccupies the
time for four doctorate personnel and four
girls.

The overwhelming percentage of these
inane forms have no relevance to us or what
we have ever done. However, if we don't fill
any of them out or we just write N/A, for
Not Applicable, we receive a threatening letter
that indicates that we will be blackballed
in federal agencies, ineligible for grants (I
imagine from such organizations as the Na-
tional Science Foundation), and that we will
have our tax exemption revoked.

This excessive, ridiculous intrusion into
private citizen's affairs is probably best ex-
emplified by *four rabbits*. We maintain an
average of 10,000 mice and rats in our animal
quarters. According to the federal govern-
ment these are not animals! We also have
four rabbits. We never have more; we never
have less. According to the bureaucracy,
these rabbits are animals.

Every two months, one or two people come
up from Washington to inspect these four
rabbits. These rabbits live, as with all our
animals, in the most modern, efficient, cli-
mate controlled, humidity controlled, tem-
perature controlled, diet controlled, bacteria
controlled conditions that science can de-
vise. The richest sheiks on the Persian Gulf
could not afford this kind of care.

These two ding-a-lings from Washington,
filled with a sense of self importance, as
though the world would come to an end if
they didn't inspect our four rabbits, take the
time of one doctorate scientist for a full day
filling out endless identical forms and asking
the same irrelevant questions; and they
make sure that we maintain a committee
for surveillance of the four rabbits, com-
posed of five doctorate people, both in house
and out house! This is not an extreme exam-
ple, but it is typical.

The bureaucratic intrusion into every
aspect of the private sector is costly to the
government and painfully expensive for us
to bear. We must use funds given to us by
individuals and foundations to do scientific
research to satisfy the federal bureaucratic
colossus and its voracious and gargantuan
appetite for our "time, talent and treasure."
We might as well be living in a Soviet type
land where Big Brother's vigilance is omni-
present, omniscient and omnipotent.

On behalf of all of us; get the federal bu-
reaucratic parasitic load off the American
people's back.

Sincerely,

JOHN H. HELLER, M.D.,
President.

Mr. WEICKER. Mr. President, obvi-
ously, Dr. Heller is not alone in singing
the dump-Washington song today. The
anti-Washington bandwagon is still roll-
ing along, but appears to be somewhat
aimless.

The crisis of confidence in our govern-
mental institutions is indeed ominous,
but we are not going to correct the mat-
ter by taking cheap shots at something
called Washington without identifying
specific problems and offering positive
alternatives.

I do not believe that we can solve our
regulatory reform problems by introduc-
ing a single bill to dissolve a least-fa-
vored Government agency, or by prema-
turely requiring commitments of our-

selves to review every decision of every
agency. I do believe that we can resolve
the regulatory impasse by establishing a
logical, methodical, reasonable approach
to the issues involved and proceed in a
comprehensive manner.

S. 2812 sets forth such a discipline for
action which would apply to both the
Congress and the President. Over a pe-
riod of 5 years, from 1977 to 1981, the
President would submit to the Congress
comprehensive plans for reforming regu-
lation in five specific areas of the econ-
omy: banking and finance, 1977; energy
and environmental matters, 1978; com-
merce, transportation, and communica-
tions, 1979; food, health and safety, and
industry trade practices, 1980; and hous-
ing, labor-management relations, Gov-
ernment procurement, equal employ-
ment opportunity, and small business,
1981.

By establishing this timetable for ac-
tion, the administration and the Con-
gress can proceed toward comprehensive
reform of the regulatory structure. The
approach outlined above is a systematic
and deliberate manner in which to at-
tack the disease. It is not a simplistic
cure for the symptoms.

One of the basis for regulation is eco-
nomic. For this reason I believe it wise to
proceed in a fashion which requires that
the administration and Congress take a
look at entire sectors of the economy in
a composite manner. Such an approach
limits the dangers of haphazard solu-
tions which create more severe problems
down the road. It offers a realistic man-
ner in which to consider how these areas
interrelate, overlap, and affect one an-
other. It also requires that, as we pro-
ceed to examine a primary area of regu-
lation, we must consider the subsidiary
effects, problems, and regulations which
have been created.

We have all had tendencies to rush
forward with new programs and new
policies. The time has come for us to
stop, look, and examine the past before
proceeding full steam into the future.
The bandaidd approach to national prob-
lems may no longer work and what may
be needed is the surgeon's scalpel. Well,
I for one do not want to go ahead with
radical surgery until I am convinced that
there is a reasonable chance of success
and recovery. S. 2812 offers a method by
which to diagnose the illness, and judge
the proper treatment.

I have always been an advocate of a
strong, active Federal Government. As
we look around in our own States or
hometowns we see the fruits of Govern-
ment's labors. By sponsoring this legis-
lation, I am not suggesting that we elim-
inate the need for regulation or the ob-
jectives. The preservation of our free
market economy and the improvement
of the quality of life are goals toward
which we must continually strive.

Likewise, I am not suggesting that we
need more study of the question. The
Government Operations Committee and
Commerce Committee will submit the
results of their joint effort in a few
months and I expect that the legislative
initiatives which will be forthcoming
will incorporate their recommendations.

What I am suggesting is action. We

have talked this issue and demagogued
enough. By enacting this bill, we bind
ourselves to do something positive.

Where there is overregulation and
duplication, let us eliminate and consol-
idate. Where there is inefficiency, let us
find out why. Let us do away with pro-
grams which have outlived their purpose
and usefulness. Let us streamline and
cut bureaucratic redtape. Let us sim-
plify and standardize forms and reports.

It is true that our Government is big.
Realistically, we cannot cut its size in
half, but we can make it more efficient
and we can make big government work
better for all of us without making it
burdensome.

TURNING ORGANIC WASTE INTO PROFIT AND POWER

Mr. BUMPERS. Mr. President, the En-
ergy Research and Development Ad-
ministration—ERDA—has recently an-
nounced a new emphasis on energy con-
servation, an initiative that I whole-
heartedly applaud. I am proud to say
that many residents of Arkansas have
long been keenly aware of the need for
conservation and are working product-
ively to make it a reality instead of a
long-term goal. In particular, Frank
Angelo, Sr., Frank Angelo, Jr., and Elbert
J. Stanley of Jonesboro, Ark., have been
leaders in this field.

They have developed a process for con-
verting waste, completely without pollu-
tion, into charcoal for industry or potash
for fertilizer, and, perhaps more im-
portant, the process has a potential for
converting heat into steam and power-
ing an electric generator.

Mr. President, the magazine *Nation's
Business*, in its May 1976 issue, has given
national recognition to this process, and
I ask unanimous consent that an article
appearing on page 36 of that issue, en-
titled "Turning Organic Waste Into
Profit and Power," be printed in the
RECORD.

There being no objection, the article
was ordered to be printed in the RECORD,
as follows:

TURNING ORGANIC WASTE INTO PROFIT AND POWER

In the process of making chicken coops,
the A & P Coop Co., Inc., of Jonesboro, Ark.,
had a problem disposing of the 80,000 pounds
of sawdust and wood chips accumulating
daily.

Hauling the waste away was expensive, and
burning it on the spot created pollution.

After a lot of tinkering and research, Frank
Angelo, Jr., vice president and son of the
owner, came up with a contraption that he
says has solved the problem. Not only does
it dispose of the waste without polluting, he
says, but it turns waste into charcoal for
industry or potash for fertilizer.

More important, he says, there is a poten-
tial for converting the disposal process's heat
into steam and powering an electricity gen-
erator with the steam. Technology exists,
says Mr. Angelo, for adding to the device an
energy recovery system that will produce
enough electricity to power 19 medium-sized
factories or about 1,000 homes.

A & P Coop has spent about \$200,000 on
the machine and hired an industrial engi-
neer, Elbert J. Stanley, to work out the bugs.
Mr. Angelo and Mr. Stanley have national
and international patents pending on the
recycling device.

The Angelo-Stanley converter can be built in a variety of sizes to accommodate almost any kind of waste disposal problem, Mr. Angelo says. It is simple to produce. The machine now in use at A & P Coop was made from an old railway tank car, cast-off boiler parts, used grain auger conveyors, and old gasoline storage tanks. The machine requires only one operator.

"What we need now is enough money to complete our research," says Mr. Angelo. "That will help us improve the afterburner to make it more efficient and come up with a design for a proper energy recovery system."

Rep. Bill Alexander (D-Ark.) was having breakfast with President Ford last summer and mentioned the Angelo-Stanley invention. Mr. Ford arranged a meeting of the two inventors with Energy Research and Development Administration officials. Mr. Angelo and Mr. Stanley have since applied for an ERDA grant to perfect the machine.

Mr. Angelo says more than 800 million tons of organic wastes are produced in the U.S. annually, not only in working with wood but also at cotton gins, rice mills, peanut processing plants, other factories, and livestock feedlots, as well as in public refuse and sewage systems.

This waste could be converted into as much energy as more than a billion barrels of oil or almost nine trillion cubic feet of natural gas, Mr. Angelo says. Such energy conversion, he adds, would be enough to offset our total purchases of oil from abroad.

A simple device which mixes outside air with gases produced by the burning waste in the converter eliminates pollution, Mr. Angelo says. The turning of a single valve determines whether the converter will produce potash or charcoal.

About four years ago, residents around A & P Coop plants began complaining about smoke and pollution. The company was forced to shut down its disposal burners and start paying to haul the refuse away.

Frank Angelo, Jr., who is 27 and majored in business administration at Arkansas State University, was then general manager. He began researching cellulose waste, pollution, and industrial recycling. Out of this same the converter.

"I am convinced that we have the answer, not only to the cellulose waste disposal problem, but to a large share of America's energy needs," Mr. Angelo says. "And we'll make it with or without the help of the government."

The Canadian government, with an eye to the tremendous amounts of wood waste generated by Canada's forest industries, is seeking a licensing agreement with A & P Coop for Canadian manufacturers.

After inspecting the invention, Arkansas State Conservation Administrator Robert L. Penton wrote:

"The development of a piece of equipment which utilizes the waste for charcoal and other by-products in a clean environment and has the capabilities of being energy-producing to boot reminds me that, too many times, we can't see the forest for the trees."

OVERREGULATION BY THE FEDERAL BUREAUCRACY

Mr. THURMOND. Mr. President, on December 15, 1975, I put into the RECORD a statement concerning the plight of Hillsdale College in Michigan. This statement was prompted by an article which appeared in Time magazine on December 8, 1975, "Suffocating Federal Help." This situation has not improved since that time. In fact, it has reached such a ridiculous point that sources of student funding are used as expansions of Federal authority under title

IX. President George C. Roche III, is not the only concerned educator. The president of the American University, the Catholic University of America, the George Washington University, and Georgetown University are so concerned with government interference and disruption to higher education that they saw fit to publish a "1976 Declaration of Independence."

Mr. President, further highlighting the plight faced by Hillsdale College and other institutions of higher learning, consequently by all Americans, I ask unanimous consent that "A 1976 Declaration of Independence," by the presidents of the American University, the Catholic University of America, the George Washington University, and Georgetown University; a letter by Dr. George C. Roche III, dated March 17, 1976, a letter to Mr. Martin H. Gerry, Acting Director, Office for Civil Rights, Department of Health, Education, and Welfare, March 24, 1976, and Acting Director Martin H. Gerry's letter of April 7, 1976, to me be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

A 1976 DECLARATION OF INDEPENDENCE

(By the Presidents of the American University, the Catholic University of America, the George Washington University, and Georgetown University)

PROLOGUE

During the first two centuries of this nation's life, government leaders were dedicated to the proposition that institutions of higher education were independent, voluntary associations serving public and private purposes. By being so dedicated, governments at all levels encouraged colleges to create a system of quality and diversity that was to become the standard of academic excellence throughout the world.

Recent government policies and behavior toward education, however, have threatened this valued independence and have shaken the foundations of our system of higher education in this country.

As Presidents of universities in the nation's capital who regularly have firsthand contacts with policy makers and regulators, we perceive an intensification of these interventionist trends and therefore are compelled to draw public attention to them.

THE THESIS

We assert three propositions:

1. Governmental interference is disrupting higher education to a point where institutional autonomy is seriously threatened.

2. Without the vigorous exercise of independence, the American system of higher education as we have known it for centuries will certainly collapse.

3. Independence in the public sector will no longer exist if independence in the private sector, traditionally the measure of educational practices and philosophies, disappears. While public institutions seek to respond to the differing needs of students in the fifty states, it is wrong to assume an automatic diversity of viewpoints or educational philosophies among these institutions. Indeed, there is often an unsettling similarity in the budgeting processes and a growing conformity in their responses to federal and state incentives.

SOME SPECIFICS

Chief among the recent trends which threaten the independence of private colleges and universities are the following:

Economic pressures

No independent educational institution can remain solvent in today's world without passing on increased expenses to the student consumer in the form of increased charges. In the past, such charges were kept to a minimum by charitable contributions but these, eroded now by inflation and threatened by proposed adverse tax legislation, are in jeopardy. Supported by tax dollars, public institutions, on the other hand, have been able to hold tuitions far below actual costs and are consequently attractive to many students who, in other circumstances, might prefer the private institution. These tuition differences have contributed to a dramatic reversal in enrollment patterns. Twenty-five years ago, fifty percent of all college and university students were enrolled in private institutions; today there are fewer than twenty percent.

Costs of compliance

We embrace wholeheartedly the concepts of equal education and equal opportunity for all and have in good faith attempted to support such concepts. However, the multiplicity of federal and local regulatory guidelines on such programs have driven up administrative costs as much as three hundred percent since 1968.

Multiple regulations

More serious than dollar costs is the danger of regulation which diverts creative minds from the tasks of teaching, research and reflection. With fifty administrative agencies and two dozen committees of the U.S. Congress and the District of Columbia having direct responsibilities that impinge on our universities, governmental regulation and oversight can become a disguised form of governmental control. Institutions are driven to defensive strategies.

The innovative and searching analysis expected of colleges by society suffers in the face of the mounting necessity for dealing with the myriad, pedantic, and sometimes contradictory requirements imposed by government regulation. Diversion of faculty and staff attention to questions of compliance is a damaging intellectual cost which universities and society at large can ill afford to pay.

Changing needs

Since public needs change, national priorities are constantly being readjusted. The record of higher education in meeting those needs, often with the support of public tax dollars, has been commendable. Yet an institution's effort to be responsible and responsive has sometimes clashed with its own traditions to create serious dislocations. One example of how programs backfire is related to the Apollo Moon program. At one time, anyone suggesting that a Ph.D. in physics might be unemployable would be accused of misunderstanding the realities of the modern world. Yet, seven years after the first moon landing, many physics departments are far larger than required by enrollments and are staffed by comparatively young tenured faculty whose talents are under-utilized.

Federal funds

Federal spending is often used as a lever to move colleges and universities toward transitory or unachievable goals. Institutional autonomy in academic programs is reduced, and diversity, creativity and reform on campuses are seriously threatened.

Career education

The U.S. Office of Education has lent its considerable prestige and its considerable resources to career education. One possibly unintended effect has been the erosion of arts and sciences as the core of liberal collegiate education. Increasingly, students are embarked on programs in which they hope to acquire more "saleable skills." Yet if the

liberal arts tradition dies, the nation will be intellectually and culturally poorer.

Independent study commissions

Higher education is one of the most "studied" enterprises in America. However valid the conclusions of such studies, they must be participated in, monitored, and evaluated by members of the academic community. Time and energy are consumed, and both translate ultimately into cash. Further, as these recommendations are adopted by legislatures and emerge into new laws, regulations and requirements, the independence of institutions may be diminished.

Local jurisdictions

The financial plight of cities drives them to seek new sources of revenue which jeopardize the tax-exempt status of all non-profit institutions. The regulatory activities of metropolitan governments toward education have expanded. It is necessary to be aware of new developments and to work constructively with local leadership. Nevertheless, the growing body of local law and procedures emerging from municipal governments may further limit the independence of higher educational institutions. Costs of compliance with urban laws, added to the already heavy federal compliance burden, could further diminish scarce educational resources.

Judicial interventions

Paralleling the growth of bureaucracy has been the remarkable expansion of judicial power, the net effect of which has been to encourage a litigious society. By aggressively assuming the role of social engineers, the courts have not only intruded their ideologies into the private, voluntary sector, but have by their decisions contributed to the proliferation of cases whose issues are better resolved under grievance mechanisms provided by the collegial governance of the universities themselves.

Growing misunderstandings

Distressing as is the intrusion of government into the day-to-day affairs of colleges and universities, even more lamentable is the loss of public confidence in—and understanding of—higher education. College is frequently viewed by parents and students as a way station toward business and professional success. While it is partially that, colleges serve wider purposes. Higher education plays its most profound role not simply in presenting trained manpower to the marketplace, but in assisting the nation to translate past traditions into the present and in building a solid future on new generations who remain committed to social growth, moral development, and progress toward the common good. It is that most fundamental of roles that we as educators and citizens must never forget.

In light of the foregoing and with deep consciousness of the significance of the declaration about to be made, we present the following—

DECLARATION OF INDEPENDENCE

Because relationships between government and institutions of higher learning have reached a critical state in this Bicentennial Year, we deem this the opportune moment to state briefly our basic beliefs and premises.

We believe that a democratic society is best sustained when its institutions of higher learning are free to establish their own policies and programs in furtherance of high-quality education.

We believe that bureaucracy has become so vast and complex in its operations that sound relationships between government and universities are hampered by overlapping and unduly restrictive procedures, and that a leveling and homogenizing process is being generated.

We Believe That the diverse educational needs of Americans are best met by colleges and universities which are themselves part

of a pluralistic and diverse educational community.

We Believe That institutions of higher learning which are committed to serving the rising educational demands of contemporary society should be helped by government financial support.

We Believe That private institutions have a most solemn obligation to husband resources carefully through appropriate administrative and educational reform.

We Believe That our steadfast objective must be the maintenance of autonomy which preserves choices of both form and substance of subject matter which is researched and taught.

Be it therefore resolved That we reaffirm our intention to maintain institutional independence from any external intervention which threatens the integrity of our institutions, including refusal of federal funds which carry such threats.

Be it further resolved That to achieve this end, we shall make every effort to—

Retain the university's autonomy over all decisions affecting the substance and the form of educational offerings;

Work with public officials to reconcile conflicting and overlapping government policies as they affect the university;

Render in good faith full accountability for all aid received from government or from any other source;

Perform in a professional manner all projects and services contracted for by governmental agencies;

Resist pressures from persons in government who, without specific legal authority, seek to influence the institution toward an unacceptable course of action.

This declaration we make in the full and deliberate conviction that only by being strong and independent can our universities fulfill their obligations to a free society.

DEPARTMENT OF

HEALTH, EDUCATION, AND WELFARE,

Washington, D.C., March 17, 1976.

DR. GEORGE C. ROCHE III,

President, Hillsdale College, Hillsdale, Mich.

DEAR DR. ROCHE: Secretary Mathews has asked me to thank you for your letter enclosing the Resolution of the Board of Trustees of Hillsdale College concerning the applicability to Hillsdale College of Title IX of the Education Amendments of 1972, and the regulations of the Department of Health, Education, and Welfare implementing Title IX. I welcome Hillsdale's support for the proposition "... of equal opportunity without discrimination by reason of race, religion, or sex, ..." as expressed in the Resolution of the Board of Trustees reflecting your commitment to continue operation on a nondiscriminatory basis.

In your letter and the accompanying resolution, the question is raised whether the Title IX regulation is consistent with the statute in applying its provisions to colleges whose only connection with the Federal Government is that students attending the institution receive Federal assistance. I have asked members of my staff to analyze the options, if any, available to the Department under the law. At the same time, there is no question but that the regulation as it stands does cover colleges such as Hillsdale.

In any event, the Department's information suggests that Hillsdale participates directly in a number of programs—for example, College Work Study, Supplemental Educational Opportunity Grants, National Direct Student Loans—and accordingly is covered by the provisions of Title IX regardless of the answer to the question you have raised. This situation corresponds with the Department's understanding that since 1964 Hillsdale, in filing assurances and reports with this Department, has acknowledged that it is subject to the requirements of Title VI of the Civil Rights Act of 1964,

a statute whose coverage is identical with that of Title IX.

I personally am pleased to hear of your support for the objectives of the law and would be pleased to discuss further with you any of the points in this letter, as you may wish. In particular, the Department will be glad to review any aspects of the regulation that may unduly impinge upon the College's independent status. It is our intention to minimize the burden imposed on the operation of academic programs consistent with the fulfillment of our obligations under the civil rights laws.

Sincerely yours,

MARTIN H. GERRY,
*Acting Director,
Office for Civil Rights.*

HILLSDALE COLLEGE,

Hillsdale, Mich., March 24, 1976.

MR. MARTIN H. GERRY,

Acting Director, Office for Civil Rights, Department of Health, Education and Welfare, Washington, D.C.

DEAR MR. GERRY: Thank you for your letter of March 17. It was reassuring to learn that the Department of Health, Education and Welfare recognizes Hillsdale's long-standing policy of equal opportunity without discrimination by reason of race, religion or sex.

Since Hillsdale has achieved this equal opportunity for all while pursuing a policy of complete independence from political funding, the trustees of the college are puzzled by HEW's insistence that our school is now subject to federal control. Frankly, such a claim has neither legal nor practical justification.

Hillsdale College has always attempted to cooperate with its students in those cases where the individuals concerned found it necessary to associate themselves with federally-funded programs. We have not felt it appropriate for the college to judge the sources of student funding, since those sources should be primarily a concern of the individual involved. However, if the expansions of federal authority under Title IX are now to use such individual funding as a means of assaulting the independence of Hillsdale College as a whole, we reserve the right to re-evaluate the programs involved.

Certainly we welcome further discussion with HEW and look forward to hearing from Secretary Mathews on this issue.

Best regards,

GEORGE C. ROCHE III,
President.

DEPARTMENT OF

HEALTH, EDUCATION, AND WELFARE,

Washington, D.C., April 5, 1976.

HON. STROM THURMOND,

*U.S. Senate,
Washington, D.C.*

DEAR SENATOR THURMOND: Secretary Mathews has asked me to thank you for bringing to our attention a copy of a statement which you placed in the *Congressional Record* of December 15, 1975.

The statement concerns the question of the applicability of regulations implementing Title IX of the Education Amendments of 1972 to institutions which receive no direct federal aid. The legal issue is whether such institutions are defined as federally assisted recipients, and thereby subject to the provisions, by virtue of members of their student enrollments participating directly in federally assisted programs, such as Veterans Benefits and Student Loans.

A copy of my reply to Dr. George C. Roche, III, President, Hillsdale College, is enclosed.

Thank you for sharing your views with me concerning this important matter.

Sincerely yours,

MARTIN H. GERRY,
*Acting Director,
Office for Civil Rights.*

MARITIME WEEK

Mr. McGEE. Mr. President, on May 19, James J. Reynolds, president of the American Institute of Merchant Shipping, delivered an important address to the Propeller Club of the Port of Los Angeles/Long Beach in observance of Maritime Day.

Mr. Reynolds, in his remarks, focused his primary attention on the issue of the Panama Canal Treaty negotiations. His discussion of the historical evolution of the Panama Canal issue was an impressive presentation. His warnings as to the maritime industry's stake in a successful outcome of the present negotiations between the United States and the Government of the Republic of Panama has elevated the debate on this issue to a very practical and pragmatic level.

As Mr. Reynolds noted:

If there is a breakdown of negotiations or a flat rejection of a Treaty by Congress, the consequences for Canal users could be catastrophic. I am not going to engage in a lot of scare talk about riots and sabotage, this nation does not jump to knee jerk diplomatic reaction because of such threats, but it is not at all difficult to conjure up scenarios under which Canal operations would be very seriously disrupted. The problem is there, and all of the loose talk about shoulder-to-shoulder Marines is not going to make it go away.

Although negotiations have been conducted sporadically since 1964, there has been surprisingly little dialogue within the United States among those having an interest in the Canal as to what the nation's future course of action should hold. Perhaps it is fortuitous that the current campaign has focused our consciousness upon it.

Mr. Reynolds then raises three very important questions associated with why we are negotiating a modern treaty relationship with the Republic of Panama. They are:

1. What is the value of the Canal to our national defense? While it clearly does not have the critical importance of World War II days, I am certain that the Canal still plays a major role, particularly for the Navy. How can this interest be protected if the Canal's status is substantially revised?
2. What is the commercial importance of the Canal? Here too, although times are changing, the Canal must continue to be available at a reasonable cost for the efficient movement of America's cargoes and ships.
3. How does the Canal relate to the overall foreign relations posture of the United States? The Canal issue is a substantial thorn in the side of our relationship with a number of Latin American nations. To the extent that the thorn can be removed without jeopardizing other vital interests, it should be done, and done promptly.

While pointing out the answers to these questions are complex and require significant public discussion and unemotional thought, Mr. Reynolds believes that when they are developed:

I believe they will show that the United States and Panama will be able to develop a mutually acceptable agreement for the future operation and defense of the Canal, and hopefully for its eventual and badly needed expansion as well.

Mr. Reynolds also made the following observation:

At a recent hearing of the House of Representatives' Panama Canal Subcommittee, its very distinguished Chairman, Congress-

man Ralph Metcalfe, called for an air of humaneness and decency to pervade our dialogue with Panama. I fully support his plea, and am certain it would be seconded over and over again by our industry. Chauvinism and jingoism are dead. The era of gunboat diplomacy and campaign-hatted Marine landings are well behind us.

Mr. Reynolds is to be commended for raising the level of debate on the Panama Canal issue to a discussion of what is in reality U.S. national interests. The maritime industry is a vital industry to our Nation and Mr. Reynolds has spelled out how best his industry can protect its access to, and interest in, an efficiently run Panama Canal.

On the other hand, Gov. Ronald Reagan has demonstrated, through his rhetoric, an insensitivity to the wide range of U.S. interests which would be seriously jeopardized in the absence of successful negotiations with Panama. A President is elected to represent and protect a broad range of national economic and foreign policy interests. Governor Reagan has demonstrated he is lacking in these attributes through his narrow and misconceived views on the Panama Canal question.

I ask unanimous consent, the speech be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

REMARKS OF JAMES J. REYNOLDS

What a great pleasure it is to be here in the Los Angeles area to commemorate Maritime Week. Many from the leeward side of the Rockies do not realize that the Los Angeles-Long Beach complex is second only to New York as an American port, and that almost 5,000 ships sail from here annually to all areas of the world, carrying vital cargoes and commodities of every description and size.

As the spokesman for the U.S.-flag steamship industry, it is very tempting to use this prestigious platform for a speech on the state of the American Merchant Marine. There is a great deal of good news to convey—an increasing awareness of the critical role played by our industry in meeting our nation's defense and commercial needs; a liner fleet that is as advanced and competitive as any in the world, the steady development of a bulk carrying tanker and LNG fleet encouraged by the terms of the 1970 Merchant Marine Act, and perhaps best of all the growing support of American shippers and cargo interests, stimulated by the very close partnership between maritime labor and industry to keeping the ships full and moving.

And I could come up with some bad news to balance things off—the increasing penetration of our essential trade routes by Soviet bloc shipping, the still depressed state of the tanker market, growing attacks on the Liner Conference system by theoreticians within the Justice and Transportation Departments, and the spread of conflicting state statutes setting vessel construction, operating and liability standards. Well, that is just a sampling from the good and bad news lists.

But today, I am going to resist the temptation to speak about the American Merchant Marine directly, and instead focus on two issues about which all of us concerned with the well-being of our merchant marine should be well informed. I refer to the economic and the political future of the Panama Canal. They are distinct and unrelated problems but each is of the greatest importance.

First a few brief words about the economic problem which began to surface dramatically in 1974 when the Canal Company announced an across-the-board 20 percent increase in toll rates. You will recall that the toll structure is based on a formula which determines the revenue producing cubic space of each vessel transiting the Canal and for each 100 cubic feet a toll fee is applied. From 1914 when the Canal became operative until 1974 the formula and toll structure remained virtually unchanged. The constantly increasing number of transits and more recently the rather dramatic increase in individual vessel size provided a steady and sizable increase in annual toll revenue.

Unfortunately, the constantly escalating income removed the normal pressures to keep operating costs under strict control and as a result costs soon escalated even more rapidly than revenue. Consequently, in 1974 when the number of transits tapered off, the situation became so serious that a 20% increase in tolls was announced and last year came another move to increase revenue, this time by changing the basic measurement rules. A.I.M.S. was successful in stopping the most burdensome, but not all of the measurement changes proposed, and what was made effective has increased total toll revenues approximately another 5%.

On top of this move came the announcement last Thursday that a still further general increase of approximately 19% will be necessary 6 months hence. What this all means is an increase in tolls of some 44% in two years with no end in sight. The fact of the matter is that costs continue to escalate and since, by law, the operation must be maintained on a non-loss basis, further increases in the years ahead seem inevitable unless drastic steps are taken to cut operating costs or Canal transits increase dramatically, a development which seems unlikely with Suez now in full operation and an alternative route to the Orient now available to European operators. At A.I.M.S.' urging the House Panama Canal Subcommittee has recently completed hearings into the Canal administration and we await its findings and recommendations with great interest. Drastic cost cutting is necessary but every step in that direction by the present very able Governor, General Parfitt, has been met by prompt and disruptive work action. It is a serious dilemma that must be faced. So much for the sorry picture of the economics of Canal operations.

As to the extremely sensitive political problem, the future status of the Panama Canal has suddenly become a major issue in the 1976 Presidential campaign, and I am sure that Californians need no reminding why. There have been misstatements and even more confusion—nothing unusual about that situation in an election year I suppose—but I am increasingly concerned that the position of our industry may be somewhat misunderstood. Today then, let me take a few moments to run through the Canal negotiations issue, and give you a few of my thoughts as to how the industry stands on the subject.

First, some background. The Panama Canal itself of course has a long and complex lineage. The idea of an isthmian canal goes back to the early Spanish explorers and conquerors, men of vision like Balboa and Pizarro who, by the mid-1500's had opened up Central and South America to commerce and colonization. It all began with Inca gold being hauled out of Peru by ship to a trading port on the Bay of Panama, transhipped by pack animal and slave labor across Panama to the east coast on a route almost identical to the present Canal, and then on to Spain aboard great galleons, which were often being pursued by English privateers captained by men who all looked like Errol Flynn!

With the westward expansion of the United States in the 1840's, the advantage of a railroad across the Isthmus became apparent to men of vision. Accordingly, the Panama Railroad Company, to finance and build such a rail line, was formed in 1847. Rights were secured from Colombia and after incredible hardship and struggle the line was completed and the first train moved from the Atlantic to the Pacific on October 1, 1851.

Twenty-seven years later a French company in 1878 began construction of a canal, generally following the route of the American rail line. The effort plagued by fearful disease and under-financing was finally abandoned in 1889. The completed one-third, together with tons of rusting equipment, lay silent in the jungles for fifteen years before it was picked up by the United States in 1904 after a series of diplomatic, financial and political moves which make a James Bond movie dull by comparison.

Growing trade with the Orient and West Coast, the broad acceptance of the concept of Manifest Destiny and finally the enormous logistical difficulties of our Navy during the Spanish-American War compelled Presidents McKinley and Roosevelt to proceed with the uncompleted French canal. To remove any concern of our European friends, Roosevelt first directed Secretary of State Hay to conclude a treaty with British Ambassador Pauncefote making clear that our intentions were to build a canal for the trade of all the world and not just our own. The rights of the defunct French company granted it by Colombia were purchased for \$40 million. Regrettably, efforts to get approval from Colombia of a treaty granting us a Canal Zone in Panama Province where lay the incomplete canal and approval of the rights to proceed we had purchased from the French were summarily rejected.

Events at this point grow a bit murky, and we could spend a day discussing who struck John, but suffice to say that Panama, which at one time had been a Spanish colony, but now a province of Colombia since 1821, declared its independence and revolted with some fortuitous help from the U.S. Navy and Marines who suddenly found themselves strategically positioned between the Colombian forces and the Panamanian revolutionists they decided to subdue. Panama was promptly recognized by the United States and within fifteen days the Hay-Bunau-Varilla Treaty of 1903 was a reality and remains today the basic document which governs our presence in the Canal Zone. Bunau-Varilla who negotiated and committed Panama to the treaty was a Frenchman who had been deeply involved as Director-General of the unsuccessful French company which had received \$40,000,000 a short time before from the United States. He had assumed authority to negotiate for Panama on the basis of honorary citizenship conferred by the infant nation and a letter from its new President Armand naming him a Plenipotentiary of the country. Whatever the validity of his credentials, his role and what he agreed to is still deeply resented this day in Panama.

Now what does this Hay-Bunau-Varilla Treaty specifically provide:

1. Panama granted to the United States the use, occupation and control of a zone of land and water for the maintenance, operation, sanitation and protection of the Panama Canal.

2. Within the zone thus granted, the United States may exercise all the rights, powers and authority which it would possess and exercise as if it were sovereign.

3. The rights granted by the Treaty are "in perpetuity."

4. Both nations agreed to recognize the terms of the Hay-Pauncefote Treaty.

5. The United States agreed to pay Panama the sum of \$10,000,000 as compensation for

the rights granted, and an additional annual payment of \$250,000—pretty much the same deal we had tried and failed to make with Colombia before the revolution.

What the 1903 Treaty provides in essence is for the United States to construct and hold the Canal and the Zone under a perpetual lease, and to operate the Canal for the benefit of international commerce. We do not hold title to the Zone, and it is in no sense a part of the sovereign territory of the United States.

There has been a good deal of election year rhetoric over this point, with one candidate calling a change in Canal Zone status akin to seceding one of the Louisiana Purchase states back to France. That is sheer nonsense. The United States was not granted nor has it ever claimed actual titular sovereignty over the Zone. The 1803 transfer of the Louisiana territory by France to the United States provided that the territory is ceded forever and in full sovereignty. It also provided in direct conflict with the Hay-Bunau-Varilla Treaty that all inhabitants of the Louisiana Territory were to immediately and automatically become citizens of the United States upon transfer.

Finally, as early as 1905, then Secretary of War William Howard Taft in an opinion given President Roosevelt stated that the Republic of Panama retained sovereignty, and over the ensuing 71 years, no President, Congress, or Court has ever held to the contrary. So in no sense is there any question in treaty negotiations of giving back to Panama land we bought and own.

In any event, after ratification of the Hay-Bunau-Varilla Treaty in 1904, the United States began actual construction and it was an extraordinary and heroic epic. Dr. Gorgas conquered yellow fever, Colonel Goethals relocated 240 million cubic yards of earth and built 12 locks, and on August 15, 1914, the first ship transited the 51-mile-long project which was then and is today truly one of the great wonders of the world. The cost—\$336,650,000, just about double the price of the new F.B.I. Building in Washington. The news of its opening was no less dramatic than the landing of a man on the moon in 1969.

The dedication and ability present during the construction period was carried over into the Canal's operations and is to a degree as present today as it was 62 years ago. Apart from the very considerable benefit it provides for national defense, the Canal has become one of the busiest and most important commercial crossroads for ocean shipping in the world. It results in time savings ranging from a day or so to weeks on a great number of international and intercoastal trade routes and until recent years of escalating costs turned a modest profit back to the U.S. Treasury virtually every year.

During 1975, almost 14,000 commercial transits of the Canal were recorded, 10% of which were attributable to U.S.-flag ships. Over 140 million long tons of cargo were transported through the Canal, 60% of which were moving to or from a United States port. And a good case can be made that the Canal is of greater benefit to the economies of lesser developed nations, especially those in Latin America, than it is to our own. I could develop reams of commercial statistics, but let it suffice for me to say that the Panama Canal is a very successful and vital commercial entity for a great number of the world's nations, including our own. From a military point of view, the rapid logistic movement it makes possible remains a major factor in the defense of the nation just as it was when opened.

It is difficult to pinpoint the beginning of our current Panama Canal problem. Some would hold that it dates back to the character and participants in the 1903 Treaty negotiations, held largely in a suite of New

York's old Waldorf-Astoria Hotel. Certainly Panama has never been too happy with the Treaty, even though it has been revised twice, in 1936 and 1955, to increase the annual annuity which now stands at \$2.3 million and to eliminate several minor but irritating extra-territorial features.

Serious trouble began to occur in 1958 with demonstrations along the Zone border, and these gradually escalated into destructive riots by 1964 when 20 Panamanians and 4 U.S. citizens lost their lives. The Canal's commercial value began to be increasingly jeopardized and of course our foreign relations posture was hardly being improved either, and on December 18, 1964 President Johnson, after conferring with former Presidents Eisenhower and Truman, announced that the United States had decided to negotiate an entire new treaty with Panama. He set forth the following negotiating objectives:

1. Formal recognition of Panama's sovereignty over the Zone.

2. Retention of rights which are necessary for the effective operation and protection of the Canal.

3. An effective discharge of common responsibilities for hemispheric defense.

By 1967, 3 treaties had been drafted to carry out these basic principles but they were not ratified by either nation.

Panama appealed to the Security Council of the United Nations to which it has twice in recent years been the elected regional representative of all Latin America. The Security Council unanimously supported Panama's desire for a new treaty—except for one veto—our own. It appealed to the Organization of American States and here the support was 100%.

Subsequent governmental changes occurred, and in 1970, President Nixon directed that negotiations be resumed. Ellsworth Bunker was named to head our negotiating team in 1973, and in February of 1974, the following general guidelines were agreed to:

1. Elimination of the concept of perpetuity.

2. Establishment of a date for Panama's assumption of jurisdiction.

3. Continued operation and defense of the Canal by the United States until the jurisdiction change occurs.

4. Greater participation by Panama in the Canal's administration during the interim.

It is certainly fair to say that there is a long, hard road to be traveled before the ratification of any Treaty implementing such principles could be seriously considered. Yet, if there is a breakdown of negotiations or a flat rejection of a Treaty by Congress, the consequences for Canal users could be catastrophic. I am not going to engage in a lot of scare talk about riots and sabotage, this Nation does not jump to knee jerk diplomatic reaction because of such threats, but it is not at all difficult to conjure up scenarios under which Canal operations would be very seriously disrupted. The problem is there, and all of the loose talk about shoulder-to-shoulder Marines is not going to make it go away.

Although negotiations have been conducted sporadically since 1964, there has been surprisingly little dialogue within the United States among those having an interest in the Canal as to what the Nation's future course of action should hold. Perhaps it is fortuitous that the current campaign has focused our consciousness upon it.

In my view, there are three questions that need to be answered very promptly and publicly by our Government.

1. What is the value of the Canal to our national defense? While it clearly does not have the critical importance of World War II days, I am certain that the Canal still plays a major role, particularly for the Navy. How can this interest be protected if the Canal's status is substantially revised?

2. What is the commercial importance of the Canal? Here too, although times are changing, the Canal must continue to be available at a reasonable cost for the efficient movement of America's cargoes and ships.

3. How does the Canal relate to the overall foreign relations posture of the United States? The Canal issue is a substantial thorn in the side of our relationship with a number of Latin American nations. To the extent that the thorn can be removed without jeopardizing other vital interests, it should be done, and done promptly.

The answers to these questions are complex, will require a great deal of public discussion and unemotional thought—they cannot be developed within a closed room in the State Department or in a climate of hysterical rhetoric. And when they are developed, I believe they will show that the United States and Panama will be able to develop a mutually acceptable agreement for the future operation and defense of the Canal, and hopefully for its eventual and badly needed expansion as well. Revenues generated directly and indirectly by the Canal are more than adequate to satisfy the reasonable expectations of Panama, and I am certain it can be operated and controlled in a manner that will meet our reasonable expectations as well.

While resolving these more cosmic questions, there are several steps that might well be taken now to smooth over the more irritating issues and thus enable the longer-range negotiations to be conducted in a reasonably tranquil atmosphere.

Most importantly, a very specific commitment should be made by the U.S. Government to fully protect residents of the Canal Zone who may be required to relocate as the result of changes agreed to by the United States and Panama. These individuals, many of whom are second and third generation Zonians, must receive full financial and employment protection, and this should be clearly spelled out well in advance.

A specific plan should be adopted to increase participation by Panamanians at all levels of Canal Company management. Although over 70 percent of Company employees are Panamanians, they are generally restricted to lower level and minor supervisory jobs.

The highly visible American presence in the Zone should be reduced where possible. The Zone is 10 miles wide and is inhabited by over 40,000 U.S. citizens. It has been called a swath of American suburbia, dropped into the middle of another and wholly different world. I doubt whether all of the people and facilities located in the Zone are needed for either operating or defending the Canal, and these should be promptly identified and relocated.

Segregation by nationality in both schools and housing must be permanently abandoned. The present Governor of the Canal Zone, General Parfitt, has taken some very specific and courageous steps in this area, and deserves a great deal of commendation.

Finally, some consideration should be given to increasing the present annuity payment to Panama which was last adjusted in 1955.

At a recent hearing of the House of Representatives' Panama Canal Subcommittee, its very distinguished Chairman, Congressman Ralph Metcalfe, called for an air of humaneness and decency to pervade our dialogue with Panama. I fully support his plea, and am certain it would be seconded over and over again by our industry. Chauvinism and jingoism are dead. The era of gunboat diplomacy and campaign-hatted Marine landings are well behind us.

It is time to recognize what our real interests in the Canal are, and then to take such steps as may be required to protect them. And in such an effort, you can hardly find two better watchwords than humaneness and decency.

I greatly appreciate your giving me this opportunity today to express some of my thoughts on a very complex and emotional subject. If your inclination is to rally round the flag and say my country right or wrong, I do hope you will reflect on things a little more. If you have not given this too much thought yet, I urge you to do so. And I further urge you, individuals having a strong interest and background in international commerce, to make your views known, and to participate in this growing national dialogue.

WILLIAM D. LEEKE, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Mr. THURMOND. Mr. President, there is nothing very glamorous about being a prison administrator. They must walk a tightrope between the "hard-liners" on one side and the "do-gooders" on the other. Community pressures and budgetary limitations add to the problems of prison overcrowding, health and sanitary headaches, and a general undesirable prison environment.

Mr. President, William D. Leeke of Columbia, S.C., is the commissioner of the South Carolina Department of Corrections. He has done an exemplary job in balancing these conflicting issues. Mr. Leeke has held his position since 1968 and now oversees 31 State prison institutions with an inmate population of approximately 6,700. He has effectuated innovative programs which ease inmate grievances and respond to public pressures while remaining within the budget.

Mr. Leeke is a professional. He is one of the Nation's senior administrators in his field and is a highly regarded member of his profession which is evidenced by his election to the position of president-elect of the American Correctional Association.

Mr. President, I believe my colleagues will benefit from an account of Mr. Leeke's administrative skills and accomplishments; therefore, I ask unanimous consent that the article, "Walking A Prison Tightrope," by Alan L. Otten, which appeared in the May 20, 1976, edition of the Wall Street Journal, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

"WALKING A PRISON TIGHTROPE"

COLUMBIA, S.C.—William D. Leeke spends his life on a tightrope.

Mr. Leeke is Commissioner of South Carolina's Department of Corrections, a job in which he oversees 31 state prison institutions, 1,500 guards and other prison personnel, and a rapidly swelling inmate population that at last count totaled around 6,700. And like prison administrators all across the country, Bill Leeke constantly must balance himself precariously among conflicting pressures.

Right-wing citizens want every criminal locked up for life, while do-gooders want all prisons torn down. State legislators expect him to handle hundreds more inmates at no extra cost, while the inmates, often backed by state or federal courts, demand more humane treatment and better facilities. Sociologists and other reformers urge increased "rehabilitation," while guards and other hard-liners dismiss all such efforts as "coddling."

"Some days they're bitching at you from 80 different directions," says the dark, slender

Mr. Leeke. "You feel like you're being made the scapegoat for all the problems of society. You have to find ways not to become numb, and to lose your compassion. Your mental health gets awfully strained."

Declares O. J. Keller, whose prison reform efforts helped persuade the Florida Senate to reject his nomination as secretary of health and rehabilitative services and who now teaches criminal justice at the University of Florida: "Being prison administrator is a no-win job. Nobody likes prisons, and they don't give any money to prisons until things blow up. Even then, they don't give enough."

As Messrs. Leeke and Keller suggest, few state commissioners last very long. Mr. Leeke, who's 43 and has been South Carolina prison director since 1968, is one of the nation's two or three senior administrators—and also one of the most highly regarded, president-elect of the American Correctional Association.

"Back during the campus riots," he says, "we used to joke that the mortality rate of prison administrators was exceeded only by that of university presidents. Now we're clearly Number One."

Until recently, Mr. Leeke's regime had been comparatively successful. He and predecessor Ellis MacDougall pushed a range of reforms that seemed to be paying off: work and educational release programs, widespread inmate furloughs, extensive vocational and general education, special care for young offenders. Recidivism rates were a third or less of the national average.

Now, however, progress is threatened by a dramatic surge in the prison population, part of a nationwide trend that has forced state after state to house new prisoners in tents, surplus schoolhouses, converted warehouses. The South Carolina system's population went from 3,700 inmates in mid-1974 to 5,650 by mid-1975; it's currently rising about 100 a month, despite new policies for faster release of present inmates.

OVERFLOWING PRISONS

The largest state prison, the Central Correctional Institution in downtown Columbia, is overflowing. Cellblock One, a five-story granite section of CCI, built in the 1860s to handle 200 men in single cells, has been housing between 550 and 600; two to three prisoners now sleep in each tiny cell, some on blankets or sheets on the cell floor. The women's prison, designed in the early 1970s for 96 women, holds 264. A brand new prison built to accommodate 448 men in single cells had almost every cell double-decked when it opened last fall.

As do colleagues across the country, Mr. Leeke cites many causes for the prisoner bulge. Recession and high unemployment have brought more crime; so have demographic changes, with millions more in the crime-prone 17 to 29 age bracket. At the same time, the public's law-and-order mood is putting more offenders behind bars: New laws setting mandatory minimum sentences, more cops arresting more people, prosecutors pushing more cases, juries convicting more often, judges giving longer sentences, and parole and probation rates dropping sharply.

"It's all so frustrating," Mr. Leeke notes. "You have to be for court reform, for more judges and faster trials. But no one is considering how these things increase the prison population. They seem to think that's Bill Leeke's problem, not the problem of the courts or the public."

Governors and legislatures naturally resist appropriating much more money for prisons; highways, schools, hospitals and a dozen other programs come first. A couple of years ago, South Carolina authorized \$37.5 million of bonds for a five year prison building program. Then, however, a budget squeeze prompted the state to freeze all construction, including the prison program. Mr. Leeke hopes to get some \$20 million released soon, but even then it will be sev-

eral years before any new prisons are ready. The once-firm plan to tear down CCI is now hopeless; the best that can be expected is enough new space to permit closing Cell-block One.

"Age and overcrowding aggravate all other prison problems," Mr. Leeke keeps warning the legislature and the public. Violence increases then among inmates and between inmates and prison personnel; health and sanitary headaches multiply; education and work release programs are disrupted. And all of this increases the likelihood that some prisoner suit will bring judicial intervention with a judge ordering South Carolina to do better by its inmates, as judges have done in Alabama and several other Southern states.

"People ask why prisoners should have privacy," Mr. Leeke observes. "But that's not the issue. The issue is that nothing is harder to control, nothing is more dangerous than a prison dormitory. People say air conditioning is a frill, and ask whether we're building country clubs. Yet air conditioning is one of the most effective devices to keep prisoner tempers from exploding, not to mention what it does for the people who work there."

Mr. Leeke sees a need for basic changes in public attitudes. "We must face up to the fact that we can't lock up everybody," he says. "We have to find some way to separate violent offenders from non-violent, and stop locking up the nondangerous people." He would also remove victimless crimes from the criminal justice system; expand pre-sentencing investigations and probation systems so that fewer people are locked up for comparatively minor offenses; and require some offenders to make restitution to their victims instead of serving time.

Until these changes come along, though, the state must of necessity release more present prisoners so as to make room for the new ones. Mr. Leeke is, in fact, releasing non-violent youthful offenders much earlier, and is trying to persuade the parole board to permit inmates to live at home if they've had good records on work-release programs.

Ironically, he points out, "the hard line in law enforcement is forcing us into more liberal policies. You can cart only so many people into prison."

BRIEFING PRESS AND PUBLIC

A key part of Mr. Leeke's job is public relations—trying to build a constituency that will understand his problems and support his efforts to solve them. Periodically he takes legislators, judges and civic leaders on prison tours to see conditions at first hand. He frequently appears on radio and TV talk shows and speaks to business and civic groups, explaining what realistically can be expected of prisons.

Above all, he endeavors to keep the press well briefed on all that's happening, bad news as well as good. Then, he says, if the prisoner on work release ups and kills his two-timing common law wife, the press may keep things in perspective, and not attack an entire program because of one failure.

"If you don't keep the public and press informed," he contends, "they can really crucify you when something goes wrong."

To ease inmate grievances, he's not only named an official ombudsman but has also set up a council of prisoner representatives who meet quarterly with him and his top deputies. The council members urge such changes as faster laundry service, annual chest X-rays, more time at vocational education classes, better ventilation in the mess halls, more picnic tables in visitor areas.

Even at best, prison work is a pressure cooker job. Mr. Leeke's Easter and Christmas weekends are particularly nightmarish times, for example, since he constantly worries that some new headline-grabbing crime will

be committed by one of the several hundred inmates out on holiday furlough then. "Every time the phone rings," he says, "I die a little."

In the past, most prison administrators were political appointees, with little training or background. Now, most are professionals—working up from the ranks, transferring from other law enforcement agencies, or coming in from university teaching.

A crack athlete at Furman College, Mr. Leeke decided on graduating that the family-chosen career of dentistry looked dull, and so went to work in a state institution for young offenders. "I thought I could go in with a baseball and football and solve everyone's troubles," he wryly recalls. "I soon found out how wrong I was, so I moved over into administration."

Except for two years in private industry, he's stayed in the corrections field—running a county experimental unit for young offenders, serving as administrative assistant to the state corrections commissioner, acting as warden of CCI. He now makes \$34,000 a year (plus house and car), and figures he'll keep gnawing his fingernails at the job as long as the state lets him.

"There's nothing very glamorous about it," he says. "The pay isn't really all that good, considering the headaches. You feel no one gives a damn about what you're doing—they don't understand it, they don't care about it. But where else could you find such a challenge?"

REBUILDING AMERICA'S CITIES

Mr. HUMPHREY. Mr. President, on Thursday, May 20, Senator JACOB JAVITS, Representative WILLIAM MOORHEAD, and I sponsored an all-day conference on "The Crisis in American Cities." The conference assembled 25 distinguished elected officials, business and labor leaders and academicians, to discuss the problems of and prospects for our major urban centers.

During the course of the conference, I made available a white paper entitled, "A Strategy for Revitalizing Our Major Urban Centers." The white paper describes various policies and programs that I believe are necessary to the survival of our cities and the survival of our Nation.

Since the problems of America's central cities are of interest to all of my colleagues, I would like to share my paper with them. For that purpose, I ask unanimous consent that my white paper, "A Strategy for Revitalizing Our Major Urban Centers," be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

A STRATEGY FOR REVITALIZING AMERICA'S MAJOR URBAN CENTERS

Our cities represent the very best, as well as the worst, that American society has to offer. They are the pinnacle of American culture—containing the great orchestras, the theaters, the museums, the universities, the libraries and the great stadiums and arenas. They are the centers of world commerce and industry. They are the great gathering places for the American people—the plazas and marketplaces of twentieth century America. Our cities are wealthy, they are powerful, they are cosmopolitan and, most of all, they are tolerant. Yet in the shadow of these great accomplishments lies the shame and despair of America. Ugly slums, deteriorated housing, overcrowding, hunger and rampant human suffering—all untouched by the

grandeur and splendor that stand just a few short blocks away.

There is much in our cities that is worth preserving and much that must be saved. Yet in the last few years, our older central cities have not fared well. Unemployment in the cities has soared above acceptable levels. Crime has become more, not less, prevalent. The deterioration of the slums has expanded slowly but steadily. Middle-income families have gradually fled to the suburbs. And business and industry have sought new locations.

These changes have left behind the poor, the elderly and the minorities, fulfilling the Kerner Commission's eight year old prophecy that "we are moving toward two societies—one black, one white—separate but unequal." But America cannot tolerate this separation—we cannot allow islands of urban poverty to persist in the midst of a sea of suburban wealth. We must recognize that the destiny of the central cities is directly related to the destiny of our Nation—that successful central cities are a prerequisite for a successful America.

THE DECLINING ECONOMIC BASE

Many of our Nation's major urban centers have been buffeted by a series of demographic and economic forces that have undermined the viability of our central cities. These forces, many of which are beyond the control of the central cities, have facilitated population outmigration, job losses and growing poverty populations. These developments have squeezed the ability of our central cities to provide essential services and still maintain reasonable tax rates.

From 1960 to 1973, many older central cities experienced significant population losses. As Table I illustrates, these declines have been particularly acute in Northeastern and Midwestern cities. These cities have been victimized by twin problems—the inter-regional migration of population from the Northwest and Midwest to the South, Southwest and West and intraregional migration from the city to the suburb.

TABLE I.—POPULATION OF 24 LARGEST CITIES

| | (In thousands) | | | Percent change 1960 to 1973 |
|---------------------------------|----------------|-------|-------|-----------------------------|
| | 1973 | 1970 | 1960 | |
| Northeast: | | | | |
| Baltimore..... | 878 | 906 | 939 | -6.5 |
| Boston..... | 618 | 641 | 697 | -11.3 |
| New York..... | 7,647 | 7,896 | 7,782 | -1.7 |
| Philadelphia..... | 1,862 | 1,950 | 2,003 | -7.0 |
| Pittsburgh..... | 479 | 520 | 604 | -20.7 |
| Washington..... | 734 | 757 | 764 | -3.5 |
| Midwest: | | | | |
| Chicago ¹ | 3,173 | 3,369 | 3,550 | -10.6 |
| Cleveland..... | 679 | 751 | 876 | -22.5 |
| Columbus ² | 541 | 540 | 471 | 14.9 |
| Detroit..... | 1,387 | 1,514 | 1,670 | -16.9 |
| Indianapolis ³ | 728 | 733 | 476 | 52.9 |
| Milwaukee ⁴ | 691 | 717 | 741 | -6.7 |
| St. Louis..... | 558 | 622 | 750 | -25.6 |
| South: | | | | |
| Dallas ⁵ | 816 | 844 | 680 | 20.0 |
| Houston..... | 1,320 | 1,234 | 938 | 40.7 |
| Jacksonville ⁶ | 522 | 520 | 201 | 159.7 |
| Memphis ⁷ | 659 | 624 | 498 | 32.3 |
| New Orleans..... | 573 | 593 | 628 | -8.8 |
| San Antonio ⁸ | 756 | 708 | 588 | 28.6 |
| West: | | | | |
| Los Angeles ⁹ | 2,747 | 2,812 | 2,479 | 10.8 |
| Phoenix ¹⁰ | 637 | 587 | 439 | 45.0 |
| San Diego..... | 757 | 697 | 573 | 32.1 |
| San Francisco..... | 687 | 716 | 740 | -7.2 |
| Seattle..... | 503 | 531 | 557 | -9.7 |

1973 figures include:

- Annexation of 4,737.
- Annexation of 26,293.
- Annexation of 306,732.
- Annexation of 6,923.
- Annexation of 11,336.
- Annexation of 364,643.
- Annexation of 136,562.
- Annexation of 14,456.
- Annexation of 10,293.
- Annexation of 64,478.
- Annexation of 9,945.

Source: Bureau of the Census.

Population declines have a damaging effect on the economic health of a central city. The tax base is reduced as middle and upper-income families flee to other regions or to the suburbs. But the need for public services does not decline at the same rate that the tax base erodes. The reason is quite simple. Many city services, such as police and fire, are provided to a certain geographic area. Even if the population declines, the fire department must still cover the same amount of territory. For this reason, population declines usually erode the tax base without significantly reducing the need for public services. This dilemma, or course, creates fiscal problems for the central cities.

A second and more damaging trend to the health of the central cities is the disproportionate number of central city residents that are poor, elderly, or handicapped. These groups essentially remain captive in the central cities after others have moved. Table II illustrates the extent to which cities have become "home" to a greater number of low-income families. While the number of people with incomes below the "official" poverty line declined in all cities from 1960 to 1970, the rate of improvement in the cities was well below improvements that were made in the Nation as a whole. As a result, fifteen of the 24 largest cities were providing services to more than their share of the Nation's poor by 1970. This trend undoubtedly has accelerated since 1970 and if cost of living differentials were taken into account, it would be even more pronounced.

TABLE II.—PERCENT OF POPULATION BELOW THE POVERTY LINE, 24 LARGEST CITIES

| | 1960 | 1970 | Percent change (1960 to 1970) |
|--------------------|------|------|-------------------------------|
| Nation..... | 18.4 | 10.7 | -41.85 |
| Northeast: | | | |
| Baltimore..... | 17.9 | 14.0 | -21.79 |
| Boston..... | 14.2 | 11.7 | -17.61 |
| New York..... | 12.8 | 11.5 | -10.16 |
| Philadelphia..... | 15.0 | 11.2 | -25.33 |
| Pittsburgh..... | 16.0 | 11.2 | -30.00 |
| Washington..... | 16.7 | 12.7 | -23.95 |
| Midwest: | | | |
| Chicago..... | 12.0 | 10.6 | -11.67 |
| Cleveland..... | 14.9 | 13.5 | -9.40 |
| Columbus..... | 14.2 | 9.8 | -30.99 |
| Detroit..... | 16.9 | 11.3 | -33.14 |
| Indianapolis..... | 13.7 | 7.1 | -48.18 |
| Milwaukee..... | 9.2 | 8.1 | -11.96 |
| St. Louis..... | 19.1 | 14.4 | -24.61 |
| South: | | | |
| Dallas..... | 16.7 | 10.1 | -39.52 |
| Houston..... | 18.1 | 10.7 | -40.88 |
| Jacksonville..... | 28.5 | 14.1 | -50.53 |
| Memphis..... | 25.6 | 15.7 | -38.67 |
| New Orleans..... | 25.6 | 21.6 | -15.63 |
| San Antonio..... | 28.6 | 17.5 | -38.81 |
| West: | | | |
| Los Angeles..... | 11.6 | 9.7 | -16.38 |
| Phoenix..... | 14.7 | 8.8 | -40.14 |
| San Diego..... | 12.0 | 9.3 | -22.50 |
| San Francisco..... | 12.1 | 10.7 | -11.57 |
| Seattle..... | 8.6 | 6.0 | -30.23 |

* Poverty line is defined as follows:

| Family size | 1960 | 1970 |
|-------------|---------|---------|
| 2..... | \$1,894 | \$2,383 |
| 3..... | 2,324 | 2,924 |
| 4..... | 2,973 | 3,743 |
| 5..... | 3,506 | 4,415 |
| 6..... | 3,944 | 4,958 |
| 7..... | 4,849 | 6,101 |

Source: Bureau of the Census.

Large poverty populations also create significant fiscal problems for the central cities. Low-income families rarely can afford to contribute a full tax share to the city. Yet they demand more services than the average citi-

zen because they cannot afford to buy services with their own income. Thus, a low-income family is likely to be a drain on the financial resources of a city, demanding more public services than the average citizen and making a lesser contribution to tax receipts.

The third factor contributing to the economic decline of the central cities is the loss of private sector jobs. Table III clearly demonstrates the extent to which central cities, particularly those in the Northeast and Midwest have lost employment opportunities. Here again, it is the middle and upper income taxpayers and businesses that are fleeing, leaving behind those that are relatively more dependent on the services provide by the city.

Unfortunately, present urban policies offer little hope for reversing this downward spiral of job losses, population declines and large poverty populations. Middle-income families and businesses that still remain in the central cities will have to shoulder a larger and larger tax burden if services are to be maintained. And if services are cut, life in the city will become less attractive. Thus, these families and businesses may be tempted to flee to the suburbs robbing the cities of much needed revenues and further accelerating the downward spiral. Only more activist government policies can interrupt this process.

TABLE III.—TOTAL PRIVATE SECTOR EMPLOYMENT IN SELECTED LARGE CENTRAL CITIES

| | [In thousands] | | Percent change (1970 to 1973) |
|--------------------|----------------|-------|-------------------------------|
| | 1973 | 1970 | |
| Northeast: | | | |
| Baltimore..... | 328 | 348 | -5.7 |
| New York..... | 2,985 | 3,182 | -6.2 |
| Philadelphia..... | 709 | 777 | -8.7 |
| Washington..... | 332 | 343 | -3.2 |
| Midwest: | | | |
| Chicago..... | 1,271 | 1,367 | -7.0 |
| Cleveland..... | 234 | 203 | 15.0 |
| Detroit..... | 503 | 581 | -13.4 |
| Milwaukee..... | 285 | 285 | 0 |
| St. Louis..... | 215 | 228 | -5.7 |
| South: | | | |
| Dallas..... | 394 | 386 | 2.0 |
| Houston..... | 581 | 549 | 5.8 |
| West: | | | |
| Los Angeles..... | 1,315 | 1,281 | 2.6 |
| San Francisco..... | 409 | 451 | -9.3 |

Source: Bureau of Labor Statistics.

THE IMPACT OF INFLATION AND RECESSION

The failure of the Federal Government to maintain full employment with reasonable price stability has exacerbated the problems of economic decline in many central cities. First, double digit inflation caused city government expenditures to rise faster than revenues. This put the squeeze on central city budgets. Recession then administered a second, and far more serious, blow to the central cities.

The recession's effect was particularly acute in the older cities of the Northeast and Midwest because these cities contain the oldest and least efficient facilities, those that are the first to be closed as production is reduced.

In 1975, according to the U.S. Department of Labor, unemployment in all central cities averaged 9.6 percent, compared to 5.3 percent in the suburbs. Yet even these devastating figures mask the disproportionate burden placed on older central cities. Even today, with one year of recovery under our belts, many older cities have unemployment rates well in excess of 10 percent. And these cities have little prospect for improvement.

Recession, however, does more than cause high unemployment. It causes large revenue

shortfalls for many central city governments and increases the demands on these governments for more services. Each percentage point increase in the national unemployment rate reduces state and local government tax receipts by approximately \$6 billion and increases expenditures by billions more. In 1975, for example, State and local government lost \$27.4 billion in revenues due to high unemployment. Much of this revenue loss occurred in the declining central cities.

These revenue shortfalls and increased demands for services forced many cities to undertake austerity measures in 1975 to maintain balanced budgets or to limit the size of their budget deficits. The results are tax increases, cuts in current service levels and capital construction delays or cancellations. There is a direct relationship between high unemployment rates and the size of the tax increases and service cutbacks. Cities that experienced high unemployment were forced to undertake major service reductions and tax increases, exacerbating economic decline in the cities that were already experiencing the most severe unemployment problems. Thus, the cyclical decline related to the recession accelerated the economic base decline that was already manifest in many central cities.

LACK OF AN URBAN POLICY

While the economic problems of the central cities are indeed large, the failure of the Federal Government to develop a consistent and coherent urban policy also has made a significant contribution to the crisis in America's cities. Federal Government tax, expenditure and credit policies often have contributed inadvertently to the problems of the cities. For instance, Federal policies have encouraged new housing construction at the expense of rehabilitation; they have supported the rapid turnover of real estate holdings; and they have financed the transportation facilities necessary for the out-migration of jobs and people. Moreover, government procurement and employment policies often have contributed to rapid economic growth in some regions while exacerbating economic decline in others.

In short, we must face the facts. While the Federal Government has not articulated a specific urban policy, inadvertent actions have often been extremely influential and at times detrimental. It is clear that the inadvertent side-effects of many government policies have directly undermined the effectiveness of Federal programs designed specifically to aid the central cities. This lack of direction—this floundering from policy to policy—cannot be allowed to continue. We simply cannot afford the luxury of inconsistency any longer.

FULL EMPLOYMENT IN THE CITIES

The cornerstone of any comprehensive program to restore vitality to our central cities is a meaningful full employment program. Without full employment the resources simply will not be available to redevelop the cities. The Federal Government will be unable to provide necessary assistance to the cities if it loses \$55 billion a year in potential revenues due to high unemployment, as it did last year. State and local government will have to struggle just to keep their budgets balanced much less undertake new initiatives, if they lose \$27 billion in taxes as a result of high unemployment, as they did last year. And private industry certainly will not invest in new plant and equipment in the central cities if existing capacity is idle and there are no prospects that demand will increase in the future.

Congressman Augustus Hawkins and I have introduced legislation (S. 50 in the Senate and H.R. 50 in the House of Representatives) that would commit the government to

achieving and maintaining full employment.¹ This bill reforms the procedures for formulating economic policy as well as mandating policies that will achieve full employment.

The procedural reforms would fall into four broad categories. First, systematic procedures for setting specific quantitative targets for output, employment, and purchasing power would be instituted. Second, all the appropriate agencies of government, including very importantly the Federal Reserve, would be required to follow policies designed to achieve those goals. Third, a time frame for achieving long range goals will be developed through a sensible, democratic planning process. Finally, the government will develop a much more sophisticated understanding of what is happening in particular markets, on both the labor and price side, how existing government policies influence the operation of those markets, and how government policies can be altered to improve the functioning of markets.

The primary focus of the policies embodied in the bill is to increase employment in the private sector. Tax policies, expenditure policies and credit policies will be used to achieve this end. Hopefully, this will be sufficient to achieve full employment. However, if these macro-economic policies are not sufficient, the bill establishes specific programs designed to deal with structural problems that consistently emerge in our economy. These structural policies include training programs, public works programs, public employment programs, youth employment programs, counter-cyclical aid for state and local governments and regional economic development policies. It is the regional economic development policies that will provide the foundation for any strategy to revitalize the economies of our central cities.

The regional economic development policies are necessary because all regional and local economies do not experience simultaneous changes in economic conditions. Some approach full utilization of labor and capital resources long before the national economy reaches full employment. Others, like the declining central cities, lag well behind national economic indicators. Some remained chronically depressed for long periods.

Aggregate fiscal and monetary policies simply are not designed to respond to the widely varied economic conditions that individual regions experience. Those policies attempt instead to regulate aggregate demand in the hope that all regional and local economies will be reached by their effects. This, of course, does not occur. Many cities already are lagging far behind the national rate of recovery.

This problem becomes particularly acute as the economy approaches full employment. At that point, additional monetary and fiscal stimulus only places upward pressure on wages and prices in tight labor markets, while doing little to reduce unemployment in depressed areas. More specific policies must be developed to reduce employment in regions and areas, particularly core areas of central cities that do not participate fully in national economic prosperity.

There are many related reasons that certain regions or areas do not share the benefits of economic growth. Migration of jobs may reduce the availability of employment opportunities, members of the labor force may lack the skills necessary for employment, investment capital may be unavailable, energy sources may be completely un-

available or too costly and the deterioration of public services may accelerate the exodus of jobs and middle-income families. Certainly, there is no simple answer that will reverse this downward spiral. Rather, an integrated regional economic development strategy is necessary that will upgrade the skills of the labor force, provide the capital necessary for investment, prevent the deterioration of public services, and offer positive incentives for the development of new employment opportunities.

The key to strengthening the economies of the declining central cities is to encourage new private sector investments to locate in these areas. This could best be done by making long-term capital available at low interest rates to businesses that locate in the declining urban areas. A Domestic Development Bank could perform this purpose. It could make long-term, low interest loans to businesses and State and local governments for the purpose of encouraging private sector investment in chronically depressed areas. The bank should make long-term loans at interest rates that are not higher than Treasury borrowing costs plus service charges. The major purpose of this bank should be to increase the availability of jobs in areas that experience unemployment rates consistently and significantly in excess of the national average.

The Domestic Development Bank is just one component of a comprehensive urban development strategy. Training programs should be used to upgrade the skills of the local labor force. Investment incentives should be used to target new investment in chronically depressed cities. And grants-in-aid should be used to maintain essential city services in cities that have rapidly deteriorating tax bases.

There are three important reasons why targeted regional economic development policies are necessary. First, in order to obtain true full employment with price stability, we must develop policies that target economic stimuli toward areas that are truly depressed without allowing excessive stimuli to leak into fully employed areas. Second, it makes good sense to locate new job opportunities where the people live. Families have social ties and economic investments that they are often unwilling to abandon. This program would bring the jobs to the people. Third, many of the areas that benefit from these programs, particularly the central cities, already have large amounts of unutilized public and private infrastructure in place (i.e., transit systems, housing, sewer and water facilities, etc.). It makes little sense to spend vast amounts of public funds to build new facilities in one area while we abandon sound facilities in another area.

Achieving full employment in the major urban centers will alleviate many of the economic difficulties that these central cities experience. Full employment will greatly reduce the welfare load borne by these cities, it will provide important new revenue sources so public services can be stabilized and it will put additional income in the pockets of center city residents.

WELFARE REFORM

The Federal Government must accept primary responsibility, once and for all, for financing welfare and health programs for disadvantaged American families. The health and welfare of individual American citizens always has been and should remain a chief concern of the Federal Government.

The existing income maintenance system in our country is fraught with shortcomings. These include:

Disparate support levels in various States, encouraging migration by welfare recipients to areas with relatively high benefits. In order to finance these benefits states and cities then are forced to impose dispro-

tionately high taxes on their middle-income residents and businesses, who, in turn, flee to a jurisdiction with a smaller welfare population. This movement, of course, undermines the viability of central cities that have large numbers of welfare recipients.

Incentives that encourage household heads to abdicate family responsibilities. According to studies done by the Joint Economic Committee staff, low-income families often are dissolved to maximize income support payments.

In some areas, the combination of cash and in-kind benefits exceeds the after tax income of some working families, imposing a strong incentive not to leave the welfare rolls for a job.

The sensitivity of the number of welfare recipients to change in economic condition. High unemployment means larger welfare rolls, forcing states and localities to pay a high price when the Federal Government fails to maintain full employment.

A reform of our income maintenance system will help relieve the fiscal crisis of the cities, restore incentives to work and preserve the dignity of the welfare recipient.

TARGETING FEDERAL EXPENDITURES

Federal Government employment and procurement expenditures can be an effective tool for increasing employment in chronically depressed regions and cities. In recent years, however, the largest increases in direct Federal employment have occurred in precisely those regions that are experiencing the greatest private sector growth. Federal nonmilitary payrolls as a percentage of nonfarm income are often three to four times higher in growing States (i.e., Colorado, Arizona, New Mexico), than in stable or declining States (i.e., New York, Ohio, Illinois). Federal procurement expenditures also tend to be concentrated in growing regions and cities.

Many of these contract and payroll expenditures could be shifted feasibly to high unemployment areas. Regional and local unemployment rates could be used as one criterion in allocating these expenditures. For example, the Federal Government might accept bids that are slightly higher from a firm that will shift its work into depressed cities. While there is certainly a limit on the level of additional cost that is acceptable, concentrating Federal Government purchases of goods and services in chronically depressed cities could make a valuable contribution to increasing employment in these areas.

FISCAL ASSISTANCE

While full employment and welfare reform gradually will strengthen the budgets of many city governments, there is still a pressing need for general fiscal assistance to cities. This assistance falls in two broad categories—general assistance to cities with long-term budget difficulties and temporary assistance that is required to assist cities in periods of high unemployment.

As a mechanism for providing general assistance, I support a renewal of the general revenue sharing program. Revenue sharing has become an important component of city operating budgets. While many cities originally used revenue sharing for capital purposes, the combination of inflation and recession has forced most cities to use every available source of funds just to maintain basic services. Thus, if the Revenue Sharing program is not renewed, cities will be forced to raise taxes or cut services this year.

Since revenue sharing is currently so important to so many cities, I think it would be a mistake to significantly alter the formula this year. Too many cities are depending on the money. However, in the future I believe that Congress should consider adjusting the formula to allocate more revenue sharing funds to the most needy jurisdictions. This might be done by altering the

¹ For greater detail, see "A strategy for Full Employment and Balanced Growth" statement by Senator Hubert H. Humphrey at the National Conference on Full Employment.

formula to reflect more adequately the number of low-income families that reside in a city.

I also believe Congress should examine the feasibility of using general revenue sharing to encourage regional tax base sharing and other governmental reforms. One of the major problems confronting some of our older central cities is that they are pockets of urban poverty in regions with wealthy suburban areas. However these cities have no way of sharing even a small portion of this wealth. Revenue sharing could be used to encourage suburban jurisdictions to share some of this wealth with the central city on whom their future viability relies. The Twin Cities in my home State of Minnesota already have developed an extremely effective tax sharing scheme. Other regions should be encouraged to do the same.

In addition to long-term budget difficulties, many cities are experiencing several fiscal problems as a result of the recession. These cities require additional fiscal assistance above and beyond their general revenue sharing program. This assistance can best be provided through a program of counter-cyclical aid to city government. This program would provide general purpose assistance to cities whenever the national unemployment rate exceeds a predetermined trigger level. The total amount of assistance that is available would vary with the national unemployment rate and the magnitude of State and local government expenditures. More aid would be available as the recession deepens and the program would phase out after recovery is well underway. The assistance would be distributed to individual cities on the basis of a formula that takes into account the total amount of own source revenues raised by that government and the level of unemployment within its jurisdiction. The total amount of this assistance should be sufficient to stabilize State and local government budgets.

The concept behind this proposal is really quite simple. The Federal Government has an obligation to maintain full employment. When it fails to maintain full employment it should compensate cities that experience excessive hardship as a direct result of that failure.

REBUILDING THE PHYSICAL ENVIRONMENT

Many of our older central cities suffer not only from a declining economic base, but also from deteriorating physical facilities.

Public facilities, such as transit systems, roads and sewer and water lines often are in desperate need of repair. Private structures—factories, warehouses, office buildings and houses—may be in a similar state of deterioration.

In many respects, rebuilding the physical environment of the city is as important as rebuilding the economic base. New public facilities generally lead to more efficient public services. They produce a sense of civic pride—that the city is worth living in and working for. Similarly, rehabilitated houses often precipitate a renewed civil spirit and a strengthened interest in the neighborhood.

Several programs should be undertaken to rebuild the physical environment of the central cities. First, we should develop a major public works investment program to modernize and replace deteriorating public infrastructure. For too long, our Nation has been privately rich and publicly poor. It is time to make a major commitment to revitalize our transportation systems, to improve our sewage treatment facilities, to upgrade our housing stock, and to provide day care centers for pre-school education.

We also should identify an inventory of individual projects that could be taken off the shelf quickly if the unemployment rate starts to rise. These should be important projects that can be started and completed

rapidly. We then would be prepared to swing into action quickly with useful projects if we enter another recession. It's very simple—we just do a little planning ahead.

But it is not enough to improve only the public facilities. We must improve the living conditions of the residents of the city—we must rehabilitate the housing stock and the neighborhoods. Where rehabilitation is still feasible, it should be actively pursued. In those areas that the housing is too deteriorated, we should embark on vigorous new construction programs.

We have a national housing goal in this country that I consider to be very important. That goal contains two separate but closely related objectives. The first portion of the goal commits the government to provide "a decent home for every American family." That means a sound structure, with suitable plumbing and heating facilities in compliance with reasonable building standards. The second part of our national housing goal commits the government to provide "a suitable living environment" for families that occupy the home. This suggests that a sound structure is not enough. It must be located in a healthy neighborhood with good schools, clean streets, reasonable public safety and, hopefully, a little greenery.

During the first five years under our goal we did pretty well. New housing starts from 1968 through 1973 averaged 1.9 million units a year.

But since then, we have had nothing short of a disaster. Housing starts in the three-year period from 1974 to 1976, despite the recovery, will average approximately 1.3 million units a year, exactly half the production necessary to meet our goals.

There are several steps that must be taken to restore housing production to levels that are sufficient to meet our housing goals.

A steady and expensive monetary policy should be carried out. Every time the Federal Reserve tightens the money supply, the whole economy suffers. But no sector suffers like the housing industry. Monetary policy must be sufficiently expansive to insure an adequate supply of credit at reasonable interest rates for the housing industry.

Policies designed to make home ownership available to a larger number of American families should be developed. That means we have got to reduce mortgage interest rates. If looser monetary policy is not enough, we will just have to do it more directly. The Federal Government must get into the business of making mortgage money available at reasonable interest rates to the average American family. This is the heart of any national housing policy.

The Federal Government should establish a Federal Housing Bank to buy mortgages and assure a steady supply of mortgage money at a fair rate of interest—six to seven percent. The size of the mortgage should be sufficient to finance a modest but adequate dwelling.

Government assisted housing construction programs for low and moderate income families should be revived. In 1968, we made a commitment to build 600 thousand government assisted units a year.

Government assisted housing starts in 1974 were about 60 thousand units, one-tenth of our national goal. In 1975, they still were below 100 thousand units.

A NEW PARTNERSHIP

We must reexamine our institutions for formulating economic policy and for coordinating Federal, state and local government activities. At present there is no systematic institution through which States and cities can make their concerns known; nor is there any method for coordinating Federal, State and local government policies; nor do we know the impact of Federal Government activities on individual states and cities. Mayors and Governors simply are not actively in-

volved in the formulation of Federal Government policies.

This relationship should be changed in several respects. First, the Vice President should become a permanent liaison with State and local government officials. Mayors and Governors need someone to be their spokesman at Cabinet meetings. When I was Vice President, Governors and Mayors were regularly consulted on major policy decisions and they had direct access to the White House through my office. Now, they're lucky to find out about major Federal policy decisions after they have been released to the press.

Second, a system of permanent regional councils should be established. These councils would be composed of state and local government elected officials and a representative of the Federal Government. The President would use the regional councils to become acquainted with the unique concerns of each region. The Federal representative would be an official just below Cabinet rank, who would act as the eyes and the ears of the President. He or she would report directly to the President or Vice President, and not through the Cabinet.

Finally, state and local government officials should be included in the Federal budget process before the budget is signed, sealed and delivered. Mayors and Governors should be consulted at the beginning of the budget process and given a meaningful input into the content of the budget.

AIDING GIFTED AND TALENTED CHILDREN

Mr. JAVITS. Mr. President, an article appeared in the May 6, 1976, Wall Street Journal which commented on the Office of Education program for gifted and talented students. In 1973, I sponsored the legislation which established this program and noted at that time its importance:

To provide what your Nation's gifted and talented children and youth need, when they need it, and in the manner they need it, is an investment in human resources that will benefit not only the gifted but our society for decades to come.

I believe that the need for and importance of this program continues. I am pleased to note that Dr. Harold C. Lyons, who directs the gifted and talented program within the Office of Education, responded to the Wall Street Journal regarding their May 6 article. I commend Dr. Lyons for the leadership he has demonstrated in taking this action, and I ask unanimous consent that both the article and Dr. Lyons' letter be printed in the RECORD.

There being no objection, the article and letter were ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Mar. 6, 1976]

FUNDING THE WHIZ KIDS

If you want to know why we shudder whenever the federal bureaucracy gets its hands on a good idea, consider what Washington is planning to do for the gifted child. The government has a point, that often talented youth waste their potential because they are bored in class, unappreciated, treated as a threat, and so forth. So the government is going to attack the problem, you guessed it, by spending money and training bureaucrats.

Congress has mandated a new program, and there is something called the Office for the Gifted and Talented in the Department of Health, Education and Welfare. The latest idea is to train leadership teams for state

governments, which will then launch their own programs for the gifted. HEW wants to set up a national training institute to produce doctoral students to staff these programs.

It also did a survey of highly successful people and discovered that they unanimously credited their achievements to the strong personal influence of a teacher or other older mentor during their youth. So, what else, HEW will try to train teachers to play this role. Along the way, the government wants to develop these youths as "whole persons" to develop their "affective qualities as well as their cognitive qualities." And all this on two and a half million dollars.

Now, of course it's not enough merely to be born gifted. To develop his or her full potential, a person needs discipline, hard work and, above all, character. All of these qualities are likely to be undermined by being singled out, in the same breath with the handicapped, as a subject for the state's embrace. It may be helpful to remove some of the obstacles to the development of a talent, but if a child lacks the will to finish the job, no amount of bureaucratic activity will make up the difference.

So we hope that any child gifted enough to be selected for HEW's attention will be bright enough to take it with a grain of salt. If not, he will be in real trouble.

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C., May 11, 1976.

THE EDITOR,
The Wall Street Journal,
New York, N.Y.

DEAR SIR: I am responding to your editorial, "Funding the Whiz Kids", published on May 6, 1976, in a hope that you will publish this letter to balance what I feel to be the short-sighted viewpoint presented in your editorial. Mr. Adams from your staff phoned me several days before your piece appeared asking information about our national effort for the gifted and talented. Though we had only a cursory conversation, I sent him more detailed information on our concerns for the gifted and talented. (There is federal concern, state responsibility, and local control of education in this country. Unfortunately, your editorial, in my opinion, did not reflect the kind of accurate and responsible journalism for which the Wall Street Journal has a long standing reputation.)

Five years ago the Congress asked the Commissioner of Education to prepare a report on what our country was doing for the gifted and talented. Over two hundred professionals contributed to this report which revealed the following crisis in terms of what we are not doing for this country's 2 million gifted and talented youth:

Fewer than four percent of the gifted are receiving services commensurate with their needs.

A false notion, as reinforced in your editorial, prevails that the gifted will make it on their own, when in fact most of them require special differentiated services (a few hours a day with their own gifted peers or one-to-one relationships with mentors) to realize their considerable potential. (A high percentage of the "dropouts" are gifted youth "turned-off" and bored by the traditional lockstep school system.)

There is considerable hostility directed toward the gifted. (They are the ones asking the threatening questions in the classrooms.)

Only ten states, five years ago, had a full time person employed at the state department of education for the gifted and talented. Yet a high correlation existed between such an effort and excellence of programs. (Most of the exemplary programs for the gifted were located in those ten states.) As a result of the leadership teams trained

through the national effort, now twenty states have a full time effort and as many have over fifty percent of a person's time in behalf of the gifted. These people are busy helping the schools to do more for their most valuable, yet neglected, natural resource—their gifted and talented youth.

A false notion that the gifted are an "elite" upper middle class group prevails, yet there are many gifted from the ghettos, barrios and Indian reservations of this country who deserve opportunities to go along with their "will" to develop; and in spite of your statement to the contrary, the evidence shows that national, state and local leadership does make a difference, as do caring and humanistic teachers who recognize and celebrate the uniqueness of these youngsters.

Whether in the sciences, the arts or the professions, these are the extraordinary few who will leave their disciplines, their societies and perhaps even human-kind different because of their work. These are the future Beethovens, the Newtons, the Jeffersons, the Picassos, the Baldwins, the Ernesto Galarzas and the Martin Luther Kings. These are gifted children—and, like the other minorities, they need help.

It may be difficult to grasp why children with the potential to achieve eminence should require special attention. The explanation is that for every Einstein or Martin Luther King who emerges, a dozen or so more do not. To quote from one conclusion from a 1968 White House Task Force study of the gifted:

"We would even go so far as to say that, to a very considerable extent, those individuals who constitute that 'creative minority' in our society (or in any society) . . . have achieved that eminence in spite of, rather than because of, our school system."

In short, traditional academic programs are sometimes poorly suited to humans of extraordinary potential. One is left to wonder how many Churchills, how many Whistlers, did not survive educational disaster.

During the 1960's when we matched the Soviets in space exploration, the national panic about the caliber of our "best" schools ebbed, and other concerns took over the educational spotlight. American educational priorities shifted from the most able students to the least fortunate, and the interest in educating the gifted and talented waned. Promising programs vanished, and even the number of articles on the subject in professional journals dropped sharply.

The American temper tends to impatience, to quick enthusiasm and to a readiness to drop projects that do not show fast results or solve immediate crises. Unlike some other clients of education, the gifted and talented have never had a large lobby. Probably they never will, for they are a minority, not much more than 1 in 20. They are burdened with the seemingly anti-democratic stigma of elitism and hampered by false assumptions such as the inaccurate belief that brilliant people will make their own way and need no special encouragement.

They do need encouragement—and society needs them. In human terms, the average child is no less precious or wonderful than his gifted classmate. But in social terms, undemocratic or unpopular as it may be to say so, the gifted and talented youngster—white, black, male, female, charming or irritating—offers much more than the usual amount of human potential, and promises to make much more than the average contribution to our common life. It is in our national interest to take special humanistic pains with him.

Sincerely,

HAROLD C. LYON, JR., EDD,
Director, Education of the Gifted and
Talented.

THE GENOCIDE CONVENTION AND FREE SPEECH

Mr. PROXMIER. Mr. President, the charge that the Genocide Convention abridges the freedom of speech is an ironic one. This treaty represents international ratification of the American tradition of respect for human rights—and certainly does not contravene first amendment guarantees.

Critics challenge article III (c) of the treaty, which proposes punishment for "direct and public incitement to commit genocide." However, this provision only reflects an interpretation of the limits to speech sanctioned by the U.S. Supreme Court.

Certain uses of language can be prohibited without jeopardizing the freedom mandated by the first amendment. Speaking for the Court in *Frohwerk* against United States, Mr. Justice Holmes stated:

... the first amendment, while prohibiting legislation against free speech as such, . . . was not intended to give immunity for every possible use of language. We venture to believe that neither Hamilton nor Madison, nor any other competent person, then or later, ever supposed that to make criminal the counseling of murder within the jurisdiction of Congress would be an unconstitutional interference with free speech.

Under the terms of the convention, incitement, and not advocacy, would be prosecuted. The Supreme Court has long maintained a distinction between the two concepts. Concurring in *Whitney* against California, Mr. Justice Brandeis wrote:

... even advocacy of violation, however reprehensible morally, is not justification for denying free speech where advocacy falls short of incitement and there is nothing to indicate the advocacy would be immediately acted on. The wide divergence between advocacy and incitement, between preparatory attempt, between assembling and conspiracy, must be borne in mind.

Though the court recently discredited *Whitney* against California, it reaffirmed the distinction proposed by Justice Brandeis:

... the constitutional guarantees of free speech . . . do not permit a State to forbid or prescribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

A component of action differentiates incitement and advocacy.

The Genocide Convention, which outlaws incitement, is therefore entirely consistent with standards set by the Supreme Court. Consequently, fear of encroachment upon freedom of speech cannot justify opposition to the convention.

Once again, I urge that the Senate reaffirm America's commitment to the protection of human rights by ratifying the Genocide Convention.

JUDGE JOHN LEWIS SMITH, JR., RECIPIENT OF VFW LOYALTY DAY AWARD

Mr. THURMOND. Mr. President, the first day of May of each year is desig-

nated Loyalty Day. The purpose of this day is to recognize those individuals who have contributed to the heritage of American freedom. This year, the District of Columbia Veterans of Foreign Wars and its Ladies Auxiliary presented their Loyalty Day Award to the Honorable John Lewis Smith, Jr., U.S. district judge for the District of Columbia.

Judge Smith's service to his country is commendable. He was commissioned as a second lieutenant in 1935 and after serving in Egypt, Italy, and Greece, was relieved from active duty in 1946 as a lieutenant colonel and now holds a commission as colonel, JAG, Reserve retired.

Following his military service, Judge Smith engaged in general law practice before all courts in the District of Columbia. This distinguished practice was recognized by President Lyndon Johnson by the appointment of Judge Smith to serve as U.S. district judge for the District of Columbia.

Mr. President, Judge Smith is the recipient of numerous honors and awards demonstrating his integrity and responsibility in community and government programs. I believe my colleagues would benefit from an account of Judge Smith's qualifications and his excellent remarks made upon accepting the Loyalty Day Award. I ask unanimous consent that an account of his qualifications and remarks be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

VETERANS OF FOREIGN WARS LOYALTY DAY PROGRAM

THE HONORABLE JOHN LEWIS SMITH, JR., U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

The Honorable John Lewis Smith, Jr., is a native and current resident of Washington, D.C., attended the public schools of the District of Columbia, the Lawrenceville School of Lawrenceville, New Jersey, received his AB (cum laude) from Princeton University and earned his LLB and LLM from Georgetown University Law School. Judge Smith is married and the father of five children.

On April 12, 1938, he was admitted to practice before the District Court of the United States for D.C. Subsequently he was admitted to exercise his profession before the United States Court of Appeals, the D.C. Municipal Court of the District of Columbia, the Supreme Court of the United States and the United States Court of Military Appeals.

His military experience dates to June of 1935 when he was commissioned Second Lieutenant, Field Artillery Reserve, was promoted to First Lieutenant in 1939, and was ordered to active duty on March 2, 1942. He was initially detailed to the Judge Advocate General's Department and assigned to Headquarters Army Air Force.

Judge Smith served overseas in Egypt, Italy, and Greece with the Military Headquarters, Balkans. He received promotions to Captain in July 1942, to Major in February 1943, to Lieutenant Colonel in December 1944, was relieved from active duty May 23, 1946, and now holds a commission as Colonel JAG, Reserve Retired.

He is the recipient of the Army Commendation Medal and his campaign ribbons include the African-Middle East, European Theatre, American Theatre, and Victory Medal.

Following his military service, Judge Smith engaged in general law practice before all

Courts in the District of Columbia, including the Supreme Court of the United States.

In 1956 and in subsequent years Judge Smith received several Presidential Appointments including membership to the Public Utilities Commission, Associate Judge of the Municipal Court for the District of Columbia, and Chief Judge for the same Court.

On November 14, 1966, he was appointed by President Lyndon B. Johnson to serve as United States District Judge for the District of Columbia.

Judge Smith is the recipient of numerous citations, honors and awards highlighting his demonstrated integrity and responsibility in community programs and government leadership, from civic, fraternal, educational and veterans organizations attesting to his valuable and unselfish contributions spanning his entire professional career.

The Loyalty Day Committee of the District of Columbia, Department of the Veterans of Foreign Wars of the United States, takes deep pride and extreme pleasure in presenting the 1976 Loyalty Day Award in this Bicentennial year, to the Honorable John Lewis Smith, Jr., United States District Judge, for the District of Columbia. "In recognition of his forthright contributions to our Nation as citizen, patriot, statesman, his dedication to the ideals of American freedom, his deep interest in the well being of veterans, and the judicial prudence he has steadfastly exercised with compassion and understanding."

PRINCIPAL ADDRESS BY HON. JOHN LEWIS SMITH, JR.

I am familiar with the list of distinguished recipients of this award in the past and it is an honor to be included among them.

We are assembled here to celebrate the anniversary of National Loyalty Day, first sponsored by the Veterans of Foreign Wars 18 years ago, and approved by Joint Resolution of Congress in 1958. Such ceremonies serve to remind us that loyalty is vital to our national life. May 1st is also Law Day when we reaffirm our allegiance to the ideals of freedom, justice and equality under law.

In many countries behind the Iron and bamboo curtains May 1st is a day for glorifying communism and opposition to our democratic institutions. Massive parades with tanks, planes and displays of military might are the order of the day, but in America this is a day of prayerful thanks for a system of government that has brought to our people a heritage of liberty and freedom never achieved by any other people in any period of history.

You members of the Veterans of Foreign Wars have served our country in foreign fields and know from personal experience the horrors of war. You, more than any other group, recognize the need for a strong America if we are to have peace. You also are more aware of the privileges that we enjoy under the Constitution—the rights of free speech, free assembly, freedom of religion, and trial by jury. As citizens of this great country we have the right to travel anywhere we wish within the borders of the United States, the right to work at any occupation we wish and the protection of due process of law.

This heritage of basic rights is ours by virtue of the struggles and sacrifices of Americans over a period of many years. Our free institutions will be maintained only by continued sacrifice and eternal vigilance.

Our forefathers decreed that this shall be one nation, indivisible, with liberty and justice for all. They further proclaimed we hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights and among these are life, liberty and the pursuit of happiness.

It is our task, therefore, to maintain on this continent a nation of free people, strong enough to withstand tyranny and oppression, wise enough to educate our children in the ways of truths, and broad enough to accept as a self-evident truth the right of every human being to worship according to the dictates of his own conscience.

This country is unique in that it has been, from the time of its discovery, the haven of the unfortunate, the oppressed, and the persecuted. For years, people of every nationality, of every religion, of every race, have willingly and freely come to our shores in search of shelter and solace from the economic, political, and religious intolerances of other governments.

America is truly one nation with many nationalities, but it is a nation dedicated to principles for which people have been willing to sacrifice and suffer, a democracy of culture, as well as a free and tolerant association of individuals, a country in which are present the values and the ideals, the arts and the sciences, the laws, and the techniques of every civilized tradition.

We must always remember that the Constitution and the Bill of Rights are not a self-executing guaranty of liberty. Their strength depends upon the determination of a self-reliant people to preserve the institutions which the Constitution establishes. The Veterans of Foreign Wars have always been in the vanguard of organizations irrevocably committed to protecting the strength and traditions of this country.

It is fitting, therefore, that in this Bicentennial year we should rededicate ourselves to preserving those ideals and institutions so that America will maintain its rightful place of leadership in the free world.

SENATE RESOLUTION 452—CONDOLENCE RESOLUTION CONCERNING DEATH OF REPRESENTATIVE TORBERT H. MACDONALD OF MASSACHUSETTS

Mr. CULVER. Mr. President, the death of Representative Torbert Macdonald has deprived Congress of one of its most valued Members and popular colleagues.

During my years in Washington, Torby Macdonald has been an especially close friend. Even before coming to Congress, I had been aware of his extraordinary athletic ability, and the large fund of friendship he possessed both from the performance of his public duties and from his family and community activities.

In recent years his service as chairman of the House Communications Subcommittee has been exceptionally productive. Public broadcasting will always bear the imprint of his influence and legislative craftsmanship. Moreover, he did as much as any man to identify the potentialities of cable television and to begin the hard task of establishing a firm and fair statutory framework for it. And there are countless other realms of legislation which have been the beneficiaries of his quiet leadership and reliable counsel.

Torby Macdonald added another luminous chapter to his career by the courage and self-discipline he exhibited throughout his long period of illness. Happily, his life was full of accomplishment, and we shall long remember him for the vigor of his mind and body and for his memorable personal distinction.

SELLING REGULATORY REFORM

Mr. HUGH SCOTT. Mr. President, the issue of regulatory reform has received a great deal of attention in the past few weeks. President Ford has moved to the forefront in the campaign to restore competition to many sectors of the economy currently encumbered by Federal overregulation. Last week, Senator Brock and I had the privilege of introducing his "Agenda for Regulatory Reform," which will go a long way toward elimination of unnecessary Federal regulation. An editorial in the May 19, 1976, Wall Street Journal underscores the necessity of such reform and points out President Ford's commitment to the cause of reform. I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

SELLING REGULATORY REFORM

One of President Ford's basic shortcomings on the hustings has been his failure to convey to the public the importance of his administration's major economic initiative, regulatory reform.

He has been attempting, against formidable odds, to set in motion processes that would systematically dismantle those activities of government that inhibit competition. It is an effort that is responsive to the very evident public concerns over the impacts of big government. Why, then, is the President having so much trouble persuading the public of the worth of his efforts?

The immediate answer, which we have touched on here before, is that he has not demonstrated sufficient dedication to it himself. He committed a primary error last December by not vetoing the Energy Policy and Conservation Act, which continued the costly, wasteful and anti-competitive Federal regulation of the oil industry. Few better opportunities present themselves for a President to make a bold and dramatic stroke in defense of the market principle.

But some things should also be said in the President's defense. His initiatives in the direction of deregulation have been considerable, however low the yield in terms of political visibility and substantive results. For example, he managed to introduce more flexibility into the ICC's control over rail freight rates as part of the rail modernization bill earlier this year. He is seeking legislation that would reduce Federal restraints on price competition in aviation and trucking.

Federal agencies have been asked to find ways to cut paperwork and regulatory delays, apparently with some results. The administration backed such other successes as the repeal of Federal "fair trade" laws, which had allowed some manufacturers to fix retail prices, and the introduction of price competition among stock brokers.

And last week, the President asked Congress to enact a comprehensive agenda for further such attempts. It calls for a four-year national effort to identify areas where the cost of government regulation exceeds benefits and to formulate new laws to reduce regulatory interference. If Congress adopts the measure, the agenda would begin next year with transportation and agriculture, continue in 1978 into mining, heavy manufacturing and public utilities, then in 1979 into light manufacturing and construction and finally in 1980 into communication, finance, insurance, real estate, trade and services.

It is interesting that the general effort towards regulatory reform has attracted bi-

partisan support in Congress. Senator Kennedy, for example, has introduced his own bill to require Federal agencies to promote competition as part of their decision-making processes. Senator Muskie is also taking a tougher line towards the problem of regulatory agency proliferation by promoting a "sunset" bill that would require agencies to justify their existence or shut down.

But the President is leading the movement. Why isn't he getting more credit for it?

The inarticulateness of his campaign generally is partly to blame. Further, it always is difficult to dramatize deregulatory efforts and to forecast their public benefits, even though there can be little doubt that increased market competition yields benefits. Finally, special interest groups are working mightily to try to undermine the deregulatory thrust by attempting to generate public fears about its consequences.

One of the myths the President has exploded through the deregulatory drive is the broad assumption that there is a strong resentment among businessmen of Federal regulation. The airlines and trucking companies have demonstrated through their lobbying efforts that some of the strongest support for anti-competitive regulation comes from regulated industries. As one White House official notes, the proregulation constituencies are far more vocal in Washington than any anti-regulation lobbies.

Since deregulation is an effort conducted on behalf of the public and often against the wishes of special interests it requires some political courage. The President has not always been bold enough. But he deserves more credit and support than he has received for the boldness he has demonstrated. What he is attempting is far more important than has so far been perceived.

PRESENTATION FROM THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

Mr. SPARKMAN. Mr. President, today, in my capacity as chairman of the Foreign Relations Committee, I had the distinct privilege to act as cohost with Representative CLEMENT J. ZABLOCKI at a luncheon held in honor of Senator Giuseppe Vedovato of Italy, who is here in the United States as an emissary of the Council of Europe. The occasion for the luncheon was a presentation, made by Senator Vedovato on behalf of the Parliamentary Assembly of the Council of Europe of a formal message of congratulations to the U.S. Congress on the celebration of this Nation's Bicentenary.

On behalf of Congress, I wish to extend heartfelt thanks to Senator Vedovato and to the Council of Europe which he represents. As my colleagues are aware, the Council of Europe's Parliamentary Assembly, which meets in Strasbourg, is a body of distinguished parliamentarians from 18 nations of Western Europe. Senator Vedovato, a former president of the Parliamentary Assembly, is a distinguished representative of that distinguished body.

I ask unanimous consent, Mr. President, that the text of the scroll presented today by Senator Vedovato be printed in the RECORD at the close of my remarks. The scroll itself will be appropriately framed and displayed here in the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit I.)

Mr. SPARKMAN. Mr. President, may I close by reiterating my sincere appreciation to the current president of the Parliamentary Assembly, Karl Czernetz; to Senator Vedovato; and to all other members of the Council's Parliamentary Assembly. Geographically, Congress and the Assembly are separated by thousands of miles. Spiritually, in our common dedication to principles of freedom and representative government, the two bodies are joined by bonds which span the distance.

EXHIBIT I

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE; MESSAGE TO THE CONGRESS OF THE UNITED STATES OF AMERICA ON THE BICENTENARY OF THEIR INDEPENDENCE

The parliamentarians of the democratic states gathered together in the Council of Europe for the purpose of achieving greater unity between European countries sharing the same fundamental values and the same aims.

Believing that the American people's accession to independence in 1776, accompanied by the establishment of the fundamental rights of the citizen, remains for the peoples of the eighteen member countries of the Council of Europe an example of the fulfillment of a collective political resolve that succeeded in instituting unified structures which are sanctioned by law and ensure a balanced exercise of powers;

Appreciating the constant efforts of the American people to encourage the peoples of Europe to co-operate with one another for the purpose of safeguarding their independence, liberty and progress;

Convinced that the countries of Western Europe and the United States of America, which link in their constitutions human rights to democratic principles, must make the preservation of freedom a common concern and serve as a pole of attraction in an ever-changing world;

Considering that world-wide economic and political interdependence places joint responsibilities on all states and demands their close and constant co-operation and therefore close consultations between the states of Western Europe and the United States of America would be welcome;

Convinced that it is more than ever important that the parliamentary democracies should make a contribution to lowering tension and to promoting peace as well as to economic and social progress in the world by mobilizing their political and economic resources, their scientific and technological skills and, above all, the dynamism of their peoples, especially the younger generation.

Call upon their colleagues in both Houses of the United States Congress to join them in a common endeavour and

—to seize the opportunity offered by the celebrations of the bicentenary of the independence of the United States of America in order to confirm solemnly the ideal of freedom on which their society is based;

—to demonstrate the constructive vitality of representative democracy by promoting in their respective countries a greater understanding by the general public of world-wide economic and political interdependence, and encouraging meetings between representatives of the United States Congress and members of the Council of Europe Parliamentary Assembly to discuss problems of mutual concern and consider ways of tackling them jointly on an Atlantic or world-wide basis.

DESEGREGATION AND THE CITIES; PART XI—LESS FOR INTEGRATION, LESS FOR COMPENSATION

Mr. BROOKE. Mr. President, we have many debates on the Senate floor about whether we should go forward with integration of our schools, and try to help that process, or whether we should try to make the segregated ghetto and barrio schools more equal. I thought it would be interesting to see how the money we have appropriated in recent years reflects congressional judgment on these choices.

The following table, prepared for me this month by the Congressional Research Service, reflects a dismal reality. Our decisions about investing money in education show that Congress has rejected both approaches. Each year we are providing less assistance, in dollars of constant value, both for helping the integration process work better and for compensatory education.

Compensatory education funds, provided by title I of the Elementary and Secondary Education Act, peaked in fiscal year 1973 and have declined about a seventh by the current fiscal year. The decline has actually been steeper, since educational costs have been rising faster than the economy's overall inflation. In addition, we adopted a new distribution formula for this program in 1974 which took substantial amounts of money away from some of our older central cities with most severe segregation, including Washington and New York. The worse segregation becomes the less we do to help its victims.

Desegregation assistance programs have always been small, but they too have been sharply curtailed. The emergency school aid program has been cut back more than 30 percent, declining each year since the 1973 fiscal year. While Members of Congress have been denouncing the educational problems of desegre-

gation, they have eviscerated a small assistance program intended to help local school districts adapt successfully to court orders. Even the smaller title IV technical assistance program has now begun to decline.

Anyone looking at this record could reach only one judgment. Congress really has given no priority either to protecting the constitutional rights of urban minority children through successful desegregation or to making separate schools more equal. While Congress can claim some credit for doing substantially more than the executive branch has requested in recent years, it is a grim story of declining commitment to decent education for urban children.

Mr. President, I ask unanimous consent that the above-mentioned table be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

APPROPRIATIONS FOR SELECTED FEDERAL EDUCATION PROGRAMS, FISCAL YEARS 1965-76, EXPRESSED IN TERMS OF BOTH CURRENT AND CONSTANT DOLLARS

| Fiscal year | Title I, ESEA ¹ | | | Emergency School Aid Act ⁴ | | Title IV, Civil Rights Act | |
|-------------------|------------------------------|-------------------------------|---|---------------------------------------|---|-------------------------------|----------------------------|
| | Deflation ratio ¹ | Appropriation—current dollars | Appropriation—1965 dollars ² | Appropriation—current dollars | Appropriation—1965 dollars ² | Appropriation—current dollars | Appropriation—1965 dollars |
| 1965 | 1.00 | 0 | 0 | 0 | 0 | 6,000,000 | 6,000,000 |
| 1966 | .973618 | 1,192,581,000 | 1,161,118,328 | 0 | 0 | 6,275,000 | 6,109,453 |
| 1967 | .943231 | 1,053,470,000 | 893,665,562 | 0 | 0 | 6,535,000 | 6,164,015 |
| 1968 | .910376 | 1,191,000,000 | 1,084,257,816 | 0 | 0 | 8,500,000 | 7,738,196 |
| 1969 | .889318 | 1,123,127,000 | 976,354,517 | 0 | 0 | 9,250,000 | 8,041,192 |
| 1970 | .823780 | 1,339,051,000 | 1,103,083,433 | 0 | 0 | 12,000,000 | 9,885,360 |
| 1971 | .783611 | 1,500,000,000 | 1,175,416,500 | 75,000,000 | 58,770,825 | 16,000,000 | 12,537,776 |
| 1972 | .749158 | 1,597,500,000 | 1,196,779,905 | 75,000,000 | 56,186,850 | 14,600,000 | 10,937,707 |
| 1973 | .717188 | 1,810,000,000 | 1,298,110,280 | 249,000,000 | 178,579,812 | 21,700,000 | 15,562,980 |
| 1974 | .665217 | 1,719,500,000 | 1,143,840,632 | 236,493,000 | 157,319,164 | 21,700,000 | 14,435,209 |
| 1975 | .602666 | 1,876,000,000 | 1,129,475,816 | 215,000,000 | 129,444,190 | 26,700,000 | 16,075,162 |
| 1976 ³ | .569214 | 1,900,000,000 | 1,081,506,600 | 215,000,000 | 122,391,010 | 26,700,000 | 15,198,014 |

¹ Calculated on the basis of the implicit GNP deflator index value for the 4 calendar quarters in each fiscal year. The "deflation ratio" is equal to the index value for fiscal year 1965 of 73.44 (where calendar year 1972=100) divided by the index value for the indicated fiscal year (for example, for 1966 the deflation ratio is equal to 73.44 divided by 75.43=.973618). Source for implicit GNP Deflator values: U.S. Department of Commerce, "Survey of Current Business", January 1976, p. 90-91, and April 1976, p. 7.

² ESEA: the Elementary and Secondary Education Act of 1965, Public Law 89-10, as amended.

³ Calculated by multiplying the current dollar appropriation by the deflation ratio for that year.

⁴ Includes appropriations for fiscal years 1971-73 for the emergency school assistance program (ESAP) in effect prior to the enactment of the Emergency School Aid Act (Title VII of Public Law 92-318, as amended).

⁵ The deflation ratio for fiscal year 1976 is calculated on the basis of implicit GNP deflator values for the 1st 3 quarters of fiscal year 1976 only, with the value for the third quarter being a preliminary figure.

U.N. CONFERENCE ON TRADE AND DEVELOPMENT

Mr. McGEE. Mr. President, the United Nations Conference on Trade and Development, currently being held in Nairobi, Kenya, is nearing the completion of its month-long deliberations on vital international economic issues.

Earlier this month, United Nations Secretary-General Kurt Waldheim, addressed the Conference and offered some very poignant observations concerning the need to speed agreement on a multitude of proposals directed at alleviating so many of the global problems impinging upon the quality of life of all peoples of this planet Earth.

As the Secretary-General noted:

We are now engaged upon the achievement of economic decolonization and upon the creation of a new international economic order. In a very real sense this is a liberation movement—liberation for the masses of humanity from poverty, hunger, unemployment, and despair. This is a great and difficult undertaking. No single nation or group of nations, not even one Continent, can achieve this goal alone. We meet here, therefore, in that spirit of shared concern and resolution to succeed that dominated the seventh special session of the General Assembly last September. In meeting the challenges that lie before us, all nations—developed and developing—have a common interest.

He concluded his address with the following observations:

The revelation of global interdependence is probably one of the main features which historians will record when they write the chronicle of the first half of the 1970s. They will presumably also observe that few words have elicited so many different interpretations. As a description of a factual situation, it is, of course, an undisputed proposition. As a prescription for a course of action, it implies far greater changes, innovations, reforms, than is often recognized. We should understand that the way to interdependence is through the strengthening of the sovereignties of developing countries, through greater assertion of their national identities and the development of their capacity for autonomous decision-making. It also requires important adjustments of the economies of the industrialized countries, and we cannot honestly pretend that these always will be painless. But we must realize that all will benefit from a more rational economic order, and that its achievement is a vital goal for all nations. I would even say that this is our inescapable destiny; and this emphasizes the full and crucial extent of your responsibilities. Let us rise to this challenge and meet these heavy responsibilities.

Mr. President, as he has so often done in the past, the Secretary-General has placed the present global dilemmas in their proper perspective and impressed upon us all the urgency for successful resolution of the differences between in-

dustrial and less developed nations. We all have a much more overriding common concern—that of creating a global environment of cooperation and equity in which all peoples derive mutual benefit.

I ask unanimous consent that the Secretary-General's speech be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

TEXT OF SPEECH BY THE SECRETARY-GENERAL TO THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, NAIROBI, KENYA, MAY 5, 1976

It is an honour and a pleasure for me to express, on behalf of the United Nations, our warm thanks to the President, Government, and people of Kenya for their generous hospitality to this important Conference. The fact that the headquarters of the United Nations Environment Programme is based in Nairobi, and the convening here of this Conference, emphasize the close links between Kenya and the world Organization and the significance of this great nation in the international community. For this support, and commitment to the goals of the United Nations, we are all profoundly grateful.

It is also appropriate that this Conference, on which so much depends for the future of international co-operation, should be held in this African nation. After the long era of colonial rule and exploitation, Africa has moved rapidly towards liberation. Today, only frag-

ments of colonialism survive in this Continent, and we know that the surging tides of history will surely eliminate them. But Africa has also discovered, as have so many nations, that the achievement of political independence does not represent the end of the struggle. We are now engaged upon the achievement of economic decolonization, and upon the creation of a new international economic order. In a very real sense, this is a liberation movement—liberation for the masses of humanity from poverty, hunger, unemployment, and despair. This is a great and difficult undertaking. No single nation or group of nations, not even one Continent, can achieve this goal alone. We meet here, therefore, in that spirit of shared concern and resolution to succeed that dominated the seventh special session of the General Assembly last September. In meeting the challenges that lie before us, all nations—developed and developing—have a common interest.

We cannot but be impressed by the solemnity of the occasion, for UNCTAD was born of the same burning aspirations which are now leading Africa into the final stage of its emancipation from discrimination and political oppression. From the outset, UNCTAD's purpose and principal aim was to transform a global economic environment that was most unfavourable for the poorest two-thirds of humanity. As we embark on one more round of negotiations, we should keep in mind this broad context and derive from it additional strength.

More than two years ago, in the wake of momentous events, we perceived conditions more conducive to a new course. Some of these had been present for many years, and others had only recently emerged. To define this new course the United Nations proclaimed a new international order as the rallying cry for concerned and multiple efforts to be sustained over a number of years. During the intervening period, we experienced what was commonly referred to as a "negotiation explosion", and one looked everywhere for encouraging signs. There was the spirit of conciliation, exemplified by the seventh special session, and more recently, the shaping of a fund for agricultural development. Again, a spirit of hope and co-operation prevailed four months ago at the opening of the Paris Conference.

But I must call to your attention the fact that many of the issues presently under discussion have been under negotiation and discussion for some twelve years. It was hoped that after so many years and with an intensified process of negotiations a modest package of measures would have reached the stage of implementation. This has not yet happened. Have we, therefore, become the victims of procedural intricacies while we lose sight of our real objectives? I do not believe so, but the danger is ever-present. We cannot and must not miss the opportunity afforded to us by this Conference. Now is not the time for one more round of repetition. Instead, we must put together, and without delay, a plausible set of measures to take us at least one step closer to our agreed objectives.

Our meeting takes place at a particular point of the economic cycle which most experts describe as a moderate, or cautious, upturn. This is a crucial juncture, for while we welcome the signs of a recovery in which less developed countries are bound to share, we must not lose sight of the upheavals of the recent years and of the elements of dangerous and lasting disequilibrium in prices and production, world trade and finance, and the international monetary system. For many developing countries, the events of recent years have caused a shift from a weak and vulnerable position to one approaching the alarming. We cannot, therefore, rely once again on the "pull effect" of expansion in advanced countries to lift Third World economies out of their present predicaments. There would be no excuse for believing that

our problems are only those of cyclical fluctuations, and for ignoring that they have deep roots in existing structures and patterns of economic relations. Just because we have become aware over the last few weeks of a rise in the price of a number of primary commodities, we should not forget the important agreement attained at the seventh special session whereby this Conference received a specific mandate regarding market structures in the field of raw materials and commodities as a condition of a stronger and more stable world economy. Nor can we at this late stage assume that the debt burden of a large number of countries can be taken care of simply by a new momentum in the world economy, and ignore that very specific measures are urgently required to alleviate it. Equally, even if trade statistics are looking better in the months ahead, the need for compensatory financing to be placed on a stable and sound footing is not going to disappear.

The message of the new international economic order is that we must set in motion a process of restructuring of the world economy. This will require more than expansion and growth, more than a better control over cyclical fluctuations, and I would say even more than the traditional policies which up to now have made up the agenda of UNCTAD conferences. The restructuring of the world economy implies, among other things,

That the share of developing countries in industrial activities be increased significantly before the end of the century;

That self-sufficiency in food in developing areas be attained within a reasonable period of time;

That indigenous capacity in science and technology be developed; and

That serious progress be made in the eradication of mass poverty and unemployment.

It is not enough for these objectives to remove obstacles to the exchange of merchandise and services, nor to adjust financial flows more accurately to meet the needs of individual countries. While these factors remain as relevant as ever, new goals and targets will have to be set, and new purposive actions initiated.

The major breakthrough of UNCTAD I in 1964 was that it viewed and discussed trade, not just in terms of rules and regulations, but in terms of quantitative objectives and in the light of long-term projections accepted as working hypotheses. It is within this framework that measures were devised, including those pertaining to compensatory financing, designed to cover short falls of export earnings which were to be expected if satisfactory rates of growth were to be achieved. I believe that the new international economic order compels us to broaden once again the sphere of economic co-operation to work out additional objectives with a well-defined time-table, as well as to adjust our instruments of co-operation to the pursuance of these goals.

Such a course would also reflect another important reality which is bound to permeate your discussions. Inside and outside the United Nations system there has been a re-examination of the optimistic assumptions of the 1950s and 1960s. This has led to certain significant changes in the current thinking about the content and the style of development. Not just policies, but philosophical premises have been questioned. Perhaps the key expression of this process is "self-reliance", and while it may mean very different things to the many who use it, it seems to cover a very large common ground. This, I believe, is in a number of ways very relevant to the purposes of this Conference. There is bound to be interaction between the promotion of self-reliance and international economic policies. It is no more taken as a self-evident truth, that an ever more open world economy may be the best approach to development. Self-reliant policies are prone

to look at trade and capital flows in a selective manner, in the light of the requirements of development plans.

They must avoid mis-allocations of domestic resources, or diversion of scarce human and material assets from urgent national objectives, such as the revitalization of rural areas; the substitution of subsistence crops for commercialized agriculture, and the promotion of large as well as small-scale programmes of public works. Perhaps above all, self-reliance emphasizes the development of a capacity for autonomous decision-making in the management of resources and in the acquisition of technology.

Emphasis on self-reliance is a constructive and positive factor. It complements and, in many ways, reinforces, the policies and objectives pursued by UNCTAD since its inception. It is true that some, in putting forward new approaches, have at times used a language which appears shrill, just as the statements about partnership which pervaded the International gatherings of the 1950s and 1960s today have a strangely tranquillizing sound. The great majority, however, takes a balanced view. The very fact that this Conference is taking place, and the shape of its agenda, demonstrate the general belief that there are beneficial ways and means of integrating developing economies within a world framework, and that financial assistance can be provided in ways which will not undermine national efforts and priorities.

The national self-reliant approach has its natural extension in the important concept of "collective self-reliance" as an expression of solidarity within the Third World. This is not the first time that UNCTAD will be discussing the expansion and strengthening of economic relations between developing countries. Greater opportunities seem to be now at hand, particularly because of the new resources available in the oil-producing countries. These are, and can be further channelled into new and sometimes large-scale productive investments, in industrial and agricultural projects, in transport and communication. It must be recognized that specific trade arrangements may be needed if new productive capacities are going to find outlets in the expanding markets of developing countries, not only for light consumer goods but also for capital equipment and more generally for the heavy manufactures which growing economies will need. Regional or interregional preferential arrangements on terms less stringent than those which are found necessary within the present rules may be needed. This notion has often been resisted, but today's perspectives should now make it more acceptable to all. Collective self-reliance within the Third World should commend the support and indeed the assistance of the industrial world, since it will enhance the over-all capacity of developing countries, and thereby facilitate a mutually beneficial dialogue with the industrialized world.

Your Excellencies, Distinguished Delegates.

The revelation of global interdependence is probably one of the main features which historians will record when they write the chronicle of the first half of the 1970s. They will presumably also observe that few words have elicited so many different interpretations. As a description of a factual situation, it is, of course, an undisputed proposition. As a prescription for a course of action, it implies far greater changes, innovations, reforms, than is often recognized. We should understand that the way to interdependence is through the strengthening of the sovereignities of developing countries, through the greater assertion of their national identities and the development of their capacity for autonomous decision-making. It also requires important adjustments of the economies of the industrialized countries, and we cannot honestly pretend that these always will be painless. But we must realize that all

will benefit from a more rational economic order, and that its achievement is a vital goal for all nations. I would even say that this is our inescapable destiny; and this emphasizes the full and crucial extent of your responsibilities. Let us rise to this challenge, and meet these heavy responsibilities.

BETTER HEARING AND SPEECH MONTH

Mr. BUMPERS. Mr. President, I would like to call the attention of my colleagues to the fact that May is Better Hearing and Speech Month. This annual observance is intended to focus public attention on the problems associated with communication handicaps, and at the same time make the public aware that such conditions can be effectively treated.

Figures indicate that nearly 10 million Americans—or one out of every 20 persons—suffer from speech or language impairments. In other words, speech and language disorders comprise this Nation's single largest handicapping condition.

To shift from statistics to human terms, these handicaps present an invisible but nonetheless very real barrier to full participation in our society. As a constituent of mine noted in a recent letter:

Communication is the cohesive force in every human culture and the dominant influence in the personal life of every one of us. Therefore, a speech disorder or a hearing impairment may inhibit an individual's social adjustment, decrease his learning ability and restrict his economic capacity.

The real tragedy is that these handicapping conditions are often susceptible to treatment. Speech and hearing impairments need not be the pervasive problems that they are today. We owe a debt of gratitude to our audiologists and speech pathologists for their dedication to solving these problems. We also owe them our strong support.

FEDERAL ELECTION COMMISSION'S PROPOSED REGULATIONS

Mr. PELL. Mr. President, as chairman of the Subcommittee on Privileges and Elections, I would like to bring the attention of my colleagues to a Notice of Proposed Rulemaking issued by the Federal Election Commission on May 24, 1976, and ask unanimous consent that it be printed in the Record after my remarks.

This Notice, together with the Commission's proposed Regulations, appeared in the Federal Register of Wednesday, May 26, 1976. I understand that additional copies of the Commission's proposed Regulations are available at the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. for interested parties.

There being no objection the notice was ordered to be printed in the Record, as follows:

FEDERAL ELECTION COMMISSION—NOTICE OF PROPOSED RULEMAKING NOTICE 1976-27

The Federal Election Commission today publishes proposed regulations under the Federal Election Campaign Act of 1971, as amended in 1974, and 1976. The proposed

regulations include Parts 100-108 (Disclosure), Part 109 (Independent Expenditures), Part 110 (Contribution and Expenditure Limitations), Part 111 (Compliance Procedures), Part 112 (Advisory Opinion Procedures), Part 113 (Office Accounts), Part 114 (Corporation and Union Political Activity), Part 115 (Government Contractors), Parts 120-124 (Convention Financing), Parts 130-134 (Presidential Primary Matching Funds).

The Commission will welcome immediate critical commentary with regard to the proposed regulations. The period for comment will close on Monday June 14, 1976.

The Commission also announces the following schedule of hearings on the proposed regulations:

Monday, June 7, 1976, Parts 100-108 (Disclosure), Chaired by Commissioner Joan D. Aikens.

Tuesday, June 8, 1976, Parts 112 (Advisory Opinion Procedure), 113 (Office Accounts), 120-124 (Convention Financing), 130-134 (Presidential Primary Matching Funds), Chaired by Commission Chairman Vernon W. Thomson.

Wednesday, June 9, 1976, Part 109 (Independent Expenditures), Part 110 (Contribution and Expenditure Limitations), Part 111 (Compliance Procedure), Chaired by Commissioner Robert O. Tiernan.

Friday, June 11, 1976, Part 114 (Corporation and Union Political Activity), Part 115 (Government Contractors), Chaired by Commissioner Thomas E. Harris.

Hearings will commence at 9:30 a.m., on each of the dates described. After a luncheon recess at 12:30 p.m., the hearings will resume at 2:00 p.m.

Persons wishing to testify should submit a request in writing to the above designated chairmen for the respective hearings, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. It will be appreciated if copies of prepared testimony are supplied the Commission at the same address at least one working day prior to the date upon which the testimony is to be submitted. The prepared material should be submitted to the Commission's Office of General Counsel, as should any other written commentary regarding these proposed regulations.

In particular, the Commission requests comment on: § 100.7(b)(5)(i), relating to the reporting of communications; the definition of common control in §§ 100.14(c)(2) and 110.3(a); the definition of independent expenditure in § 109.1; all of the provisions of Part 110, covering contribution and expenditure limitations; all of the provisions of Part 114, covering corporate and union fundraising, and especially the definition of § 114.1, and the solicitation sections, § 114.5 and 6; and Part 133, covering termination of payments to Presidential candidates receiving matching funds.

The Commission stresses the importance it attaches to the comment and hearing procedure which is initiated by this notice. Last year's hearings on disclosure, for example, produced many useful amendments to the then pending regulations. The Commission accordingly encourages the most thoroughgoing analysis and criticism of the materials published today.

Date: May 24, 1976.

VERNON W. THOMSON,
Chairman, for the
Federal Election Commission.

FEDERAL ELECTION COMMISSION

[11 CFR Chapter 1]

[Notice 1976-28]

FEDERAL ELECTION CAMPAIGN ACT

Amended Notice of Proposed Rulemaking
On Wednesday, May 26, 1976, the Federal Election Commission published a No-

tice of Proposed Rulemaking, 41 FR 21572, which noted that hearings on the proposed regulations would be held on June 7, June 8, June 9, and June 11, 1976, at the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. The hearing scheduled for June 11, 1976, on Parts 114 (Corporate and Union Political Activity) and 115 (Government Contractor) is hereby rescheduled for Thursday, June 10, 1976, at 9:30 a.m.

Dated: May 25, 1976.

VERNON W. THOMSON,
Chairman, for the
Federal Election Commission.

[FR Doc. 76-15688 Filed 5-26-76; 8:45 am]

ORGANIZATIONS ENDORSING S. 3425

Mr. NELSON. Mr. President, since I introduced S. 3425 on May 13, 10 Senators have joined as cosponsors. In addition, several organizations have endorsed S. 3425. I ask unanimous consent that an updated list of organizations endorsing S. 3425 be printed in the Record.

There being no objection, the list was ordered to be printed in the Record, as follows:

UPDATED LIST OF ORGANIZATIONS ENDORSING NELSON'S LOCKS & DAM NO. 26 BILL, S. 3425

LABOR

American Railway Supervisors' Association.
American Train Dispatchers' Association.
Brotherhood of Locomotive Engineers.
Brotherhood of Maintenance of Way Employees.
Brotherhood of Railroad Signalmen of America.
Brotherhood of Railway Carmen of the United States and Canada.
Brotherhood of Sleeping Car Porters.
Hotel and Restaurant Employees and Bartenders International Union.
International Association of Machinists and Aerospace Workers.
International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers.
International Brotherhood of Electrical Workers.
International Brotherhood of Firemen and Oilers.
Railroad Yardmasters of America.
Railway Employees' Department, AFL-CIO.
Sheet Metal Workers' International Association.
Transport Workers Union of America.
United Transportation Union.
American Rivers Conservation Council.
Clean Air and Water Unlimited (St. Paul, Minnesota).
Defenders of Wildlife.
Environmental Action.
Environmental Policy Center.
Friends of the Earth.
Izaak Walton League of America.
National Audubon Society.
National Wildlife Federation.
Natural Resources Defense Council.
The Sierra Club.
The Wilderness Society.
Wildlife Management Institute.
The Wildlife Society.

OTHER ORGANIZATIONS

State of Wisconsin—Department of Natural Resources Board.
The National Taxpayer's Union.

RAILROADS

The Atchison, Topeka and Santa Fe Railway Company.
Burlington Northern Inc.
Chicago & Eastern Illinois Railroad Company.
Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

Chicago & North Western Transportation Company.
 Chicago, Rock Island & Pacific Railroad Company (William M. Gibbons, Trustee).
 Illinois Central Gulf Railroad Company.
 The Kansas City Southern Railway Company.
 Missouri-Kansas-Texas Railroad Company.
 Missouri Pacific Railroad Company.
 The Norfolk & Western Railway Company.
 St. Louis-San Francisco Railway Company.
 Soo Line Railroad Company.
 The Southern Pacific Transportation Company.
 The Texas and Pacific Railway Company.
 Union Pacific Railroad Company.

CONGRESSMAN BRADEMÁS AWARDED HONORARY DEGREE BY TUFTS UNIVERSITY

Mr. KENNEDY. Mr. President, earlier this week our distinguished colleague in the House of Representatives, the Honorable JOHN BRADEMÁS of Indiana, was awarded the honorary degree of doctor of laws by Tufts University in Medford, Mass.

The degree was presented to Congressman BRADEMÁS by Burton Hallowell, president of the university, at the university commencement exercises on May 23, 1976.

Congressman BRADEMÁS, who serves as chief deputy majority whip of the House, is widely recognized for his outstanding leadership in the field of education, and I congratulate him on the honor he has received from one of the outstanding universities in our commonwealth.

Mr. President, I ask unanimous consent that the text of the citation for the honorary degree awarded to Congressman BRADEMÁS by Tufts University may be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSMAN BRADEMÁS AWARDED HONORARY DEGREE BY TUFTS UNIVERSITY

PRESIDENT. Mr. President, I have the honor to present The Honorable John Brademas, member of the United States House of Representatives from the Third Congressional District of Indiana, and Chairman of the House Select Subcommittee on Education, to receive from your hand the honorary degree of Doctor of Laws.

PRESIDENT. John Brademas, during your eighteen years as a Democratic member of the Indiana delegation to the United States House of Representatives, you have earned a reputation as one of education's best friends. Indeed, in a poll conducted last year, college and university presidents and other national leaders chose you among the top four persons in this country as "most influential" in higher education. The reasons for their choice are clear. You are without question among the most able and hard-working of the legislators on Capitol Hill. As chairman of the House Select Subcommittee on Education, you have played a central role in shaping national education legislation. Your name has appeared on a wide variety of legislation concerned with elementary and secondary education, vocational education, teacher training, child development, rehabilitation for the disabled, and programs for the aged.

Like so many of your fellow Americans, your origins were modest. You won a scholarship to Harvard and were graduated magna cum laude in 1949. You were a Rhodes Scholar and earned a doctorate in social studies from Oxford. In 1958, you were elected to your first term in the House of Representatives from the Third Congressional District

of Indiana, which has returned you to Washington ever since. You are a man of principle with a pragmatic sense of the needs of your own constituency. You are a blunt speaker for the truth whatever your audience.

For outstanding and dedicated national leadership in virtually all fields of education, and for sticking to your faith in education regardless of the political weather, Tufts proudly confers upon you the honorary degree of Doctor of Laws.

MAYOR ERASTUS CORNING OF ALBANY SUPPORTS THE TAXABLE BOND OPTION

Mr. KENNEDY. Mr. President, one of the most important bills now pending in Congress is the so-called taxable bond option, which offers a Federal interest subsidy to State and local jurisdiction that issue taxable bonds.

Under the pending legislation which Congressmen HENRY REUSS, AL ULLMAN, and I introduced in the House and Senate and which was recently approved by the House Ways and Means Committee, the Federal Government would pay 35 percent—40 percent in my Senate bill—of the market interest rate on taxable municipal bonds.

State and local jurisdictions would be free to continue to use the traditional tax exempt form of financing, which would not be affected by the proposal. But for jurisdictions that choose to make their bonds taxable, a substantial Federal interest subsidy would be available. For many jurisdictions, the program would offer an important new source of financial assistance in meeting their capital needs.

Recently, Mayor Erastus Corning 2d of Albany, N.Y., endorsed the proposal in a presentation at the Siena College discussion of municipal finances. In the course of his discussion, Mayor Corning provides an excellent analysis of the advantages and benefits of the proposal. I believe his presentation will be of interest to all of us, and I ask unanimous consent that it may be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PRESENTATION BY ERASTUS CORNING 2D AT SIENA COLLEGE DISCUSSION OF MUNICIPAL FINANCES, MAY 20, 1976

For many generations one of the great rights of State and local governments, municipalities that is, has been the right to sell their bonds with the interest paid on those bonds exempt from Federal Income taxes. This right has always had nearly the sanctity of a Federal constitutional guarantee. It has never been tampered with lightly or thought to be cast aside without long and sober reflection. It has been of great financial benefit to the taxpayers of our municipalities.

Today there is before the Congress a most exciting proposal to provide municipalities an election under which State and local governments may issue taxable obligations and receive a Federal subsidy of 35 to 40 percent. (S. 3211) This interest subsidy compensates the municipality for higher borrowing costs caused by the elimination of the tax exempt status on its interest payments. It is a new tool for municipalities to use in marketing their securities. It expands the market. The long term right of issuing bonds where the interest is tax exempt will not be changed, or modified in the slightest degree. The new proposal will be an alternative, an

option, to use only when it seems advantageous.

Let us examine why this proposal has been advanced and what its benefits are. In the first place the market for tax exempt bonds has shrunk from what it used to be. Until recently individuals of wealth and the vast banking industry bought tax exempts to provide tax free income. Today is different. With the tremendous increase of bank holding companies, many of them having leasing companies with built in tax shelters as subsidiaries, the demand for tax exempts on the part of banks has been substantially reduced. In addition, in recent years there has been a tremendous increase in pension funds, both public and private, and profit sharing trusts, neither of which receives any benefit from the purchase of tax exempt bonds. Private pension funds alone hold around \$130 billion in assets, while state and local pension funds have almost another \$100 billion in investments. All of the above would seek to invest their funds in municipal bonds at rates of interest substantially higher than those usually available on tax exempts.

One simple example will show the importance of this. A tax exempt bond with an interest rate of 6 percent has the same net cost to the municipal taxpayer as a taxable bond paying 10 percent with a 40 percent Federal reimbursement. The advantage to the investor such as a tax exempt pension fund, or any taxpayer with a tax bracket under 40 percent is obvious. The net cost to the Federal Government will be the 40 percent subsidy reduced by the income taxes paid on the taxable interest. It is estimated that for every dollar of net cost to the Federal Government from two to six dollars of cash benefits will be received by the municipalities. This is good business. It is particularly so when compared to this year's estimate under the present system where the Federal treasury will lose \$4.8 billion and municipalities gain \$3.2 billion or but 75 cents for each Federal dollar. \$1.2 billion of the Federal loss will go to banks and high income individuals.

One further point to be made is that if the supply of tax exempt bonds is reduced materially through the issuance of taxable municipals, the law of supply and demand will operate to the benefit of municipalities by causing the price of tax exempt bonds to go up and the interest cost to the taxpayers on new issues to go down accordingly.

A similar proposal to this one now before the Congress passed the House of Representatives in 1969. It was defeated in the Senate because of violent opposition on the part of State and local governments Country-wide. This opposition was caused by unreasonable fear that the legislation was an opening wedge looking to the elimination of the right to issue tax exempt bonds. Today the climate is changed materially. The demand for and advantage of tax exempts is not as great as what it was seven years ago. In addition the Congress has had it pounded into its mind to the point that it now recognizes fully that the historical right to issue tax exempts is one part of the Internal Revenue Code that is inviolate. It is only an option being added. Nothing is taken away.

Today the United States Conference of Mayors is enthusiastically in favor of this legislation. Representative Ullman, Chairman of the Ways and Means Committee, sees this measure as both a financial benefit to government; federal, state and local, and a tax reform as well. The only opposition of any substance that I know of is that of the Finance Officers Association, a most conservative group still fearful that the tax exempt right will be lost.

It is interesting to see how this proposal will work in its actual operation. A very simple method would be for each municipality wishing to issue taxable bonds with Federal reimbursement to fill out an application thirty to sixty days before the proposed bond

sale. The basic requirements for approval need be nothing more than what are required today: (1) a statement of the amount, date, term and purpose of the bond issue; (2) the usual statistical statement of the municipality together with the recently added so called disclosure provisions; (3) a legal opinion from qualified bond counsel; (4) a standard form of contract between the municipality and the Federal government, approved and signed by the municipal official authorized to enter into such a contract. With the application, supporting documents, and duly executed contract all in order, Federal approval should be automatic and the contract executed and returned to the municipality well before the date of the bond sale.

The obligation of the Federal government would be to pay to the municipality the agreed interest reimbursement throughout the life of the bond in time for the municipality to make its periodic payments to the bond holders. The municipality would be required to pay over to the bond holders the money received from the Federal government. It could use these funds for nothing else. The obligation of the Federal government to make payments would only be to the extent that the municipality pays the bond holder. If the municipality defaults, the Federal government would pay nothing until such time as the municipality resumes interest payments. This provision is necessary because of the various types of municipal bonds. We have the full faith and credit bonds of States and local governments. We have Industrial development bonds which have no government backing of any nature whatsoever, and in between we have bonds such as those issued by the Dormitory Authority or the Urban Development Corporation. The obligation of the Federal government should be no more and no less to the bond holders than the obligation of the municipality. If the interest is paid, the Federal government pays its share. If the interest is not paid, the Federal government does not pay. With these provisions the contract between the Federal government and the municipality can be simple, clearly understood, and entered into in each case quickly and without red tape.

This legislation has been reported to the floor of the House. It will be much in the news in the next few weeks. The mechanics of how it will operate will be spelled out in detail and I am sure the number of its supporters will swell. My guess is that it will be the law of the land by the time the snow flies. This is a financial tool of value. It is of value Country-wide.

The fiscal crisis in New York City has served to call dramatic national attention to a problem which has been growing throughout our country—the problem of maintaining a sound fiscal basis for local government.

Local government provides the day-to-day services which are the foundation of our civilized society. Garbage disposal, fire protection, sewage treatment and disposal and the provision of a safe water supply may not excite the imagination and capture the headlines like moon shots and international treaties, but without them it would not be possible to maintain the lifestyle which we have come to refer to as the "American way of life."

For many years we have seen a continued erosion of the importance and prestige of state and local government as the federal government grew enormously and assumed an ever larger role in the area of public service. Now there seems to be a general agreement that a shift back to state and local government is in order. If such a shift of authority and responsibility back to the state and local level is going to take place, it will only be achieved by well conceived hard work by concerned and realistic public officials and private citizens like ourselves. Obviously financing government is one of the most basic elements in achieving this objective.

The Taxable Bond Option is not a magic solution to the problem of municipal financing; it is not necessarily even the single major answer. It is rather a tool, and an important one, which can contribute to the overall solution of the fiscal crisis of the cities. It is unique and important, in that it is imaginative and innovative and indicates our willingness to chart new ground and deviate from long established financial practices. It will be good for the State. It will be good for all our states. It will be good for our cities, towns and villages. What is truly good for all of these is good for our beloved country.

ORDER OF PROCEDURE—ENERGY ACTION NO. 2

Mr. JOHNSTON. Mr. President, I have a series of parliamentary inquiries about the possibility of business later in the day. It relates to the resolution to disapprove Energy Action No. 2, which is now on the calendar.

My first question is this—

The ACTING PRESIDENT pro tempore. Will the Senator yield? It is not on the calendar at the present time. It has been referred to the Committee on Interior and Insular Affairs.

Mr. JOHNSTON. Very well.

Under the previous unanimous-consent agreement, at 11:30 the antitrust bill comes up for debate with no time agreement. After that comes up for debate, as I understand it, any Senator can make a motion to discharge the Committee on Energy Action No. 2. That motion is subject to 1 hour of debate, is highly privileged, and will, in effect, if adopted, displace the antitrust bill for the period when it is under debate. Is that correct?

The ACTING PRESIDENT pro tempore. The Chair will advise the Senator that that is only true with regard to a Member favoring the resolution. Everything else the Senator has stated is correct.

Mr. JOHNSTON. So if I favor this resolution, then I can move to discharge the committee and it will then become the pending business for 1 hour?

The ACTING PRESIDENT pro tempore. The motion to discharge is in order and has a 1-hour limitation of debate.

Mr. JOHNSTON. Would it be in order, after that becomes the pending business, to move to reduce the time for debate to less than 1 hour?

The ACTING PRESIDENT pro tempore. No. It could be done by unanimous consent only before the resolution is actually before the Senate.

Mr. JOHNSTON. If the committee is not discharged on motion, is there any other way to bring up Senate Resolution 449, other than by discharging the committee?

The ACTING PRESIDENT pro tempore. Only by unanimous consent.

Mr. JOHNSTON. Very well. If, by a majority vote, the committee is discharged, then Senate Resolution 449 becomes the pending business?

The ACTING PRESIDENT pro tempore. No. Then a motion to proceed to its consideration would be required to make it the pending business and would be in order. The motion to proceed is not debatable pursuant to the provisions of Public Law 94-163.

Mr. JOHNSTON. It is not debatable.

The question would be put immediately, then, to a vote; is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. JOHNSTON. Once we proceed to Senate Resolution 449, it becomes the pending business under a 10-hour limitation.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. JOHNSTON. And any Senator may move to shorten the time for that debate, which motion is nondebatable and requires a majority vote to shorten the time for debate; is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. JOHNSTON. Once we begin debate on Senate Resolution 449 under a 10-hour time limitation, it proceeds until it is disposed of. It must be disposed of by the close of business today. My question is: On the close of business today, can that be past 12 midnight tonight and still be the close of business today?

The ACTING PRESIDENT pro tempore. The Senator is now requesting a legal opinion as to whether or not, if neither the House nor the Senate passes a resolution by midnight tonight, it constitutes the end of the 15 days and the President's recommendation then goes into effect.

Mr. JOHNSTON. It must be by midnight, then?

The ACTING PRESIDENT pro tempore. The 15 days are up at midnight, tonight.

Mr. JOHNSTON. I thank the Chair.

Mr. PHILIP A. HART. Will the Senator yield?

Mr. JOHNSTON. Yes.

Mr. PHILIP A. HART. I think the exchange just had between the Chair and the Senator from Louisiana suggests the reason I rise to express concern and yet, in a sense, resignation. The effort to bring the Senate to a vote on the antitrust bill, which is pending, has been supported strongly by the leadership. As a result, there is available to us today and tomorrow. The only way, given the exchange which has just occurred, those of us anxious to bring the antitrust bill forward could forestall action on Senate Resolution 449 would be for us to take the floor as of 11:30 this morning and hold it for so long as would run out the clock for the Senator from Louisiana, which would be midnight tonight. Even if the Senator from Michigan was not under some physical handicaps, he has never claimed the ability to hold the floor from 11:30 a.m. to 12 midnight. But I do feel an obligation to raise with the leadership the problem that this presents for those of us who are advocating the antitrust bill.

What is being suggested—which, as I say, unless I hold the floor until midnight, can be done by motion—is to surrender 1 of the 2 remaining days.

Mr. JOHNSTON. Mr. President, will the Senator yield at that point?

Mr. PHILIP A. HART. I yield.

Mr. JOHNSTON. I would expect, as a practical matter, that we will instantaneously take up the Senator's bill. If I get the floor, I would then move to discharge the committee, we would then have a vote on that at 12:30, and after

we then proceed to take up Senate Resolution 449, the leadership would propose to consider that matter under a time limitation of probably 1 hour, and if we win those two votes, I mean if we win the first vote to discharge the committee, I think we would have the votes to shorten the time for debate to 1 hour, which is all the debate we need, and I feel that the opposition would probably go along with that; they have nothing to gain by a filibuster 10 hours in length, because a filibuster 10 hours in length cannot be successful.

Mr. PHILIP A. HART. Yes.

Mr. JOHNSTON. So I would hope we could accommodate the Senator in that respect.

Mr. PHILIP A. HART. Under that scheme, how many hours would the Senator anticipate would be required to dispose of Senate Resolution 449?

Mr. JOHNSTON. A total of 2 hours, 1 hour on the motion to discharge and 1 hour for debate.

Mr. PHILIP A. HART. Perhaps the Senator would give me an opportunity to ask the Senator from Nebraska if we will be able, given the problem presented by Senate Resolution 449.

THE ANTITRUST IMPROVEMENTS ACT OF 1976

The ACTING PRESIDENT pro tempore (Mr. CULVER). If the Senator will suspend, under the previous order, the hour of 11:30 a.m. having arrived, morning business is now closed and the Senate will proceed to the consideration of H.R. 8532, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized.

ORDER OF PROCEDURE—ENERGY ACTION NO. 2

Mr. PHILIP A. HART. Mr. President, I have no intention of seeking to deny the floor to the Senator from Louisiana for the purpose of making a motion the discussion of which has been had during the last few minutes. Before yielding, I wonder if the Senator from Nebraska or the Senator from Alabama would be in a mood to enter into a unanimous-consent agreement that would permit us to vote finally on the antitrust matter.

Mr. HRUSKA. Mr. President, I have not consulted with other Senators. I do not think there will be any reluctance about presenting some amendments today for argument, debate, discussion, and a vote, but of course the opening debate on the bill in general has not yet been completed, and it would be premature, I believe, to consider any request for limitation of debate at this time.

Mr. PHILIP A. HART. I note that one's conclusion about the adequacy of opening debate tends to be colored by his position on the subject. The fact that we hold different views on the subject matter probably would explain why we have

different opinions as to whether it has been adequately discussed.

Mr. HRUSKA. That undoubtedly has some merit.

Mr. PHILIP A. HART. Mr. President, I suggest the absence of a quorum.

Mr. GRIFFIN. Mr. President, if the Senator will withhold that, if I may just make this comment, there are two ways to proceed here. One is to proceed without any unanimous-consent agreement of any kind, and then it is a question of who has the floor and is willing to yield for what purpose.

On the other hand, some of us are very much interested in this measure, and one Senator in particular, the Senator from Tennessee (Mr. Brock), is tied up in committee, of course, and will be tied up on a very important tax bill until probably 12:30.

If there were a unanimous-consent agreement that the floor would be made available at 12:30 for the motion to discharge the committee, there would be, of course, an hour under the statute, and we would be voting at 1:30. There would be no objection to that. Perhaps the Senator could get the floor and make the motion ahead of that; but if he wants some certainty in it, I would suggest that as a possible way of proceeding.

Mr. JOHNSTON. That would be suitable to me. As a quid pro quo, might we shorten the time for debate by 1 hour, to 9 hours?

Mr. GRIFFIN. I personally would be agreeable to that. At the moment I cannot give unanimous consent, because I am representing other Senators in the matter. But I think those Senators realize that if the Senator from Louisiana prevails on the initial vote, or if he loses, that is pretty much going to decide the situation, and we are likely not to have too much trouble one way or the other on the motion to shorten the time. That is my view.

Mr. JOHNSTON. Very well; I would agree to do that.

Mr. GRIFFIN. I think having that 1 hour scheduled at a time when interested Senators can be here and participate in the debate would be important, because they will have had the opportunity to make their arguments, and I think they will be more satisfied that the vote on the motion to discharge the committee will be a decisive vote.

Mr. JOHNSTON. I think the request is a reasonable one, and I would agree to unanimous consent, and would so move, with the concurrence of the leadership.

I ask unanimous consent that at the hour of 12:30, I be recognized to move to discharge the committee on Senate Resolution 449, to be followed by the usual 1 hour of debate.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. HRUSKA and Mr. PHILIP A. HART addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized.

Mr. PHILIP A. HART. Mr. President, reserving the right to object, I think I have stated the dilemma that confronts those seeking to amend the Antitrust Act. There is no question that the leadership had sought to give us a full 2-day

discussion period, but the law, as I understand it, establishes as a privileged matter the subject of Senate Resolution 449.

I have explained that the only way that we can prevent consideration of it would be for ourselves, the proponents of the bill, to filibuster the bill. That is a position I do not want to get into. In the hope that not more than an hour will be consumed, I would reluctantly enter no objection.

Mr. ALLEN. Mr. President, reserving the right to object, how much time would be allotted to the consideration of the resolution? Is a limitation placed on it?

The ACTING PRESIDENT pro tempore. Under the law, the Senator from Alabama would be required—

Mr. ALLEN. I know it is 10 hours, but how much time is being asked for?

The ACTING PRESIDENT pro tempore. One hour under the law on the motion to discharge.

Mr. ALLEN. One hour, and then we would return to the antitrust legislation at the end of 1 hour; is that correct?

The ACTING PRESIDENT pro tempore. It depends upon the disposition of the discharge motion. If it comes there will undoubtedly be further action on Senate Resolution 449.

Mr. ALLEN. All right. That 1 hour will be used; is that correct?

The ACTING PRESIDENT pro tempore. That is all that is allotted under the law.

Mr. ALLEN. Then would that mean that on the discharge resolution, there is 1 hour or is there 1 hour for the discharge motion and the resolution together?

The ACTING PRESIDENT pro tempore. There is 1 hour for the discharge motion itself.

Mr. ALLEN. And then, if that carries, the resolution itself is allocated 10 hours of debate; is that correct?

The ACTING PRESIDENT pro tempore. The resolution itself would have up to 10 hours of debate under the law.

Mr. ALLEN. Could there not be a further limit to that time? We do not want to have 10 hours of discussion.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. ALLEN. I yield.

Mr. JOHNSTON. Right before the Senator came in we had a colloquy and the law provides for 10 hours of debate. As a practical matter, if we win the motion to discharge, then we will immediately make a motion to shorten the time for debate from 10 hours down to 1 hour. Everyone agrees that as a practical matter 1 hour of debate is all the debate we will need.

Mr. ALLEN. Could that not be included in the present request? That is what the Senator from Alabama wished to know.

Mr. JOHNSTON. It could be, but I am not in a position to make it.

Mr. ROBERT C. BYRD. It could be, but indications are there would be an objection to unanimous consent to that effect at this time.

Mr. ALLEN. We would definitely proceed to the consideration of the resolution with a potential 10 hours of debate; is that correct?

Mr. JOHNSTON. That is correct.

However, we will move to shorten the debate to 1 hour. That is a nondebatable motion which is decided by majority vote pursuant to law.

So if we have the votes to discharge the committee, we will have the votes to shorten the debate.

Mr. ALLEN. Very well.

A further parliamentary inquiry, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. ALLEN. Would either the consideration of the resolution or the consideration of the motion to discharge under the unanimous-consent agreement displace the foreign assistance bill as the unfinished business?

The ACTING PRESIDENT pro tempore. No.

Mr. ALLEN. So, would it displace the—

The ACTING PRESIDENT pro tempore. Excuse me. If the Senator will yield, they would be taken up as privileged matters.

Mr. ALLEN. Yes. That would not displace then the order allowing us to proceed to antitrust on tomorrow as a first order of business.

The ACTING PRESIDENT pro tempore. No.

Mr. ALLEN. I thank the Chair, and I withdraw my objection.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR JOHNSTON
AT 1:30 P.M.

Mr. JOHNSTON. Mr. President, I further ask unanimous consent that I be recognized immediately after the vote on the motion to discharge Senate Resolution 449, if that motion prevails.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GARY HART). Without objection, it is so ordered.

THE ANTITRUST IMPROVEMENTS ACT OF 1976

The Senate continued with the consideration of the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes.

Mr. ALLEN. Mr. President, this bill, S. 1284, the provisions of which have been offered as a substitute to H.R. 8532, the pending bill, is probably the worst item of legislation that has been brought to the floor of the Senate in this Congress. It must be rejected by the Senate or recommitted promptly to committee if we are to avoid doing grave damage to the economic well-being of our people and to the political health of our free institutions.

This is not a bill merely modifying procedural aspects of the Federal anti-

trust laws. This bill is, rather, a radical departure from the existing statutory scheme for antitrust enforcement, and it creates a new substantive cause of action which is revolutionary in concept and will be catastrophic in effect.

Mr. President, this bill is not primarily procedural; it is primarily substantive; but whether procedural or substantive, it is throughout ambiguous, poorly worded, badly written, inartfully structured, impractical, shortsighted, and not in the least worthy to be considered by this body. The proposed legislation is so replete with alarming and ill-conceived proposals that I truly find it difficult deciding where the greatest danger lies, or what specific provision deserves primary attention. So, Mr. President, in this dilemma I am afraid I am going to be forced to start at the beginning and from there examine each provision of this proposed substitute until I get to the end, and then possibly start over again.

TITLE I

This bill astonishingly is entitled, "The Hart-Scott Antitrust Improvements Act of 1976." Mr. President, if ever a wolf hid in sheep's clothing, it is the atrocious provisions of this bill masquerading in the guise of "improvements." Yes, Mr. President, once again under the mindless banner of improvements or "reform," the Senate is asked to adopt sweeping changes in the fabric of our legal system—changes which will wreak untold havoc in the structure of our economy and the lives of our people but which many will hail as needed and beneficial simply because they have been labeled improvements.

Mr. President, this bill will improve nothing but the bank accounts of lawyers and the political power of State attorneys general. A more appropriate and accurate title for this bill might be "The States' Attorneys General Political Relief Act of 1976," or, as has been suggested by our distinguished colleague from South Carolina, Senator THURMOND, "The Anti-Trust Lawyers Full Employment Act of 1976," because it would benefit the attorneys throughout the country who specialize in this field of practice or the attorneys who are political friends of the power structure in the various States.

Mr. President, this bill improves nothing. It destroys much that is good, including established legal procedures which guarantee due process and fair play. It will cost consumers millions of dollars. It is supposed to be in aid of consumers, but the price increases that necessarily would have to result from the tremendous damage suits and recoveries against companies furnishing consumer goods and products would be so great that there would be no recourse but to have price rises to compensate for the payment of millions of dollars in damages to those who would institute suits as provided by this bill.

It promises to bring chaos to sound judicial administration of antitrust cases.

TITLE II

The first substantive departure from commonly accepted notions of due process and plain fair play occurs in title II, which purports to set forth procedural

amendments to the Antitrust Civil Process Act. In fact, title II authorizes investigatory powers foreign to our Republic and abhorrent to our tradition. Title II permits the Attorney General—and of course, that is the U.S. Attorney General, as distinguished from the State attorneys general, who are given judicial powers under this bill—the U.S. Attorney General, or the head of the Antitrust Division of the Department of Justice, to institute, in effect, roving inquisitorial panels which to me appear to be closely patterned after similar traveling witch-hunting curia utilized to root out wickedness and vice in the villages and towns of Spain during the Inquisition in the Middle Ages in Europe.

Under the provisions of title II, the Attorney General or the head of the Antitrust Division—and I would remind Senators that neither of those gentlemen are answerable to the electorate nor, to an increasing extent even to the President—the Attorney General or the head of the Antitrust Division would be authorized to demand that any person produce documents, answer interrogatories, and give oral testimony to certain inquisitors, either acting singularly or tribunal-style, to be designated from time to time at the sole discretion of the Attorney General or the head of the Antitrust Division. The scope of inquiry permitted is, astoundingly, not limited to violations of the antitrust laws. In addition to any matter related to the antitrust laws, the scope of inquiry would also encompass—and here we see an example of the bill's ambiguity and plain awkward wording—any matter relevant to "competition in a Federal administrative, or regulatory agency proceeding." Mr. President, has there ever been a Federal administrative or regulatory agency proceeding in which matters related to compensation were not involved? Perhaps so, but the case would be rare indeed.

Mr. President, in practical effect, the Attorney General's inquisitor will have carte blanche to call on the carpet virtually anyone so long as there were some remote connection with a Government proceeding. I have no doubt that the present Attorney General, an honorable and able man, would use this immense power with discretion, but a less responsible Attorney General, armed with the inquisitorial powers granted by this bill, could do irreparable damage to individuals and to society.

Who will these inquisitors be and where will they come from? Where are the inherent safeguards of a locally selected grand jury? Mr. President, I do not believe we have come hundreds of years down the long line of the development of our legal heritage to enact in the Bicentennial Year a law which would permit unidentified designees of an appointed official to sit in unspecified numbers in our cities and towns as roving curia of the Attorney General examining whatever witnesses they care to call, inquiring with respect to virtually any matter said to affect commerce.

Perhaps, Mr. President, there are those here who think that I am overly alarmed at this roving appointed grand jury, this imperial curia, this Spanish Inquisition permitted by title II. If so, let me remind Senators that title II provides only

grudgingly that the witness may be accompanied by a lawyer, who is apparently denied the right to give on-the-spot counsel and is permitted to speak only briefly to make formal objection to assert that his client is entitled to refuse to answer a question on grounds of self-incrimination or for other reasons. With respect to other functions normally performed by a lawyer present at the deposition of an individual whom he represents, the bill states bluntly, "he shall not otherwise interrupt the examination." The lawyer is thus permitted only to make for the record certain specific formal objections, but he otherwise is prohibited from interfering with the proceeding.

If a miscreant called before a title II inquisitor refuses to answer on grounds of the right against self-incrimination, testimony may nevertheless be compelled in accord with the provision of part V of title 18, United States Code. If the witness simply refuses to answer, the inquisitors may obtain the assistance of the local Federal district court in ordering an answer. If the witness still refuses, the consequences for contempt of court may be imprisonment without trial for an indefinite period. Similar imprisonment in the case of refusal to answer before a grand jury at least is limited to the duration of the grand jury proceeding, whereas under title II, no limiting period can be established. I also remind Senators that the offending witness need not himself be the actual subject of the investigation to suffer the very dire consequence I have described.

Some will say that we should not concern ourselves about the civil liberties which would be lost if this bill were enacted, since only civil antitrust investigation will be conducted; but, Mr. President, the information developed by the Federal antitrust inquisitors operating under title II may be delivered for use in any court, grand jury, or other forum in which an attorney of the Antitrust Division has been designated to appear regardless of whether the matter involved is civil or criminal. Moreover, all information developed will be made available on request to the Federal Trade Commission, where it will presumably be available to anyone who cares to inquire.

Additionally, Mr. President, this bill will permit any person instituting a civil action under the Anti-Trust Civil Process Act (76 Stat. 548; 15 U.S.C. 1311) to obtain any documentary material produced in the transcript of any criminal grand jury proceeding concerning the subject matter of that person's civil action. Such private access to grand jury information is permissible only after completion of any civil or criminal proceeding instituted by the United States, which gets the first bite, but the information delivered could include documents and testimony made available to the grand jury by one or more of the roving panels of inquisitors established by title II. The point is, Mr. President, that the traditional secrecy and care exercised in grand jury proceedings, which has served over the centuries, would be with total abandon and, I believe, completely without forethought, tossed out the window.

I refer Senators to page 34 of the ma-

jority report for policy reasons for grand jury secrecy. It is well known to all of them without the majority report.

Now, going to title III—and speaking of title III, I might comment on why there is more than one title in the House bill as it comes to us. The House bill has only one title and, obviously since it is the complete bill and there are no extra provisions on other subjects, it contains just the body of the bill, and it has to do with the *parens patriae* concept which, in this particular case, allows State attorneys general to file antitrust proceedings under the Federal antitrust laws.

I hardly see the applicability of the expression, English rendition, of the term "*parens patriae*," which would be parent of our country. I hardly see how attorneys general, acting in this capacity, could be, prove to be, parents of our country.

But, nevertheless, that is what comes to us from the House.

This House bill never went to a committee, which seems rather strange. The explanation given was that since the Senate committee was considering this provision, along with other provisions, that the Senate committee, in effect, did have an opportunity to study the area covered by the House bill. Therefore, there was not need of sending this House bill to the Senate committee.

I understand the House has certain bills on most, if not all, of the titles in the Senate bill, but they prefer to consider each title in a separate bill.

Well, does that make sense? Yes. Some of the titles have good provisions. Put together, however, it makes a mishmash of unrelated items and, going the Senate route, you either have got to vote for this mishmash, this conglomeration, of provisions or vote against it. You cannot pick and choose.

They might say you can pick and choose by offering amendments knocking out some of the titles. But that is hardly an adequate answer because when you get down to the final vote you may still have reservations about some of these provisions.

So this House bill is to build this up, it never having gone to a committee. Well, the first crack out of the box when the bill came up for consideration here on the floor, well, they offered an amendment to the bill adding—not the Senate bill, obviously that could not be done—but they added the provisions of the Senate bill, that is, S. 1284, which goes far beyond the provisions of the House bill.

Mr. DOMENICI. Mr. President, will the Senator from Alabama yield for a request, without losing his right to the floor?

Mr. ALLEN. Yes, I would be delighted to yield to the Senator.

Mr. DOMENICI. I would suggest to the Senator that Senator BELLMON and I be granted up to 10 minutes to discuss a matter on the floor out of order without the Senator from Alabama losing his right thereafter. We have a situation, Senator, where we want to have something in the Record now without disturbing the Senator's statement in any way, and we would ask unanimous consent that we be permitted to speak for 10 minutes out of order, and that our remarks

appear so as not to destroy the continuity of the Senator's remarks.

Mr. ALLEN. I thank the Senator for his request, and I certainly would be glad to accede to his request.

The Senator realizes that at 12:30 we go to another matter having to do with discharging the committee that has the FEA regulations before it. The purpose is to rescind the FEA regulations.

Realizing that by giving up the floor at this time the continuity of my remarks will not be interrupted, because of the Senator's request that this appear at a different point in the Record, I would be delighted to yield to the Senator at this time with the understanding that I do regain the floor, Mr. President, when the FEA regulation matter has been disposed of. I ask unanimous consent that that be the case.

The PRESIDING OFFICER (Mr. DURKIN). Is there objection to the request? The Chair hears none, and it is so ordered.

Mr. DOMENICI. Mr. President, I thank my good friend from Alabama.

OPTIONAL GRANT PROGRAMS FOR EDUCATION

Mr. DOMENICI. Mr. President, during hearings before the Budget Committee a few weeks ago, many Governors and education leaders spoke about the present education categorical grant programs. The consensus that day certainly was a concern for wasted dollars, duplication of efforts, and general inefficiency, and extreme redtape.

The notion occurred to me at that time that perhaps the States and local education planning agencies were in a better position to run their own education programs. Certainly individual States understand their own needs and priorities, and those needs must be different from State to State. Federal programs often overlook individual State problems, individual State priorities, and individual State proficiencies.

As my colleagues may recall, the administration recently submitted a plan to Congress which would consolidate many education categorical programs into a single block grant. States would receive the same moneys, but the strings would be removed. For the first time, a widesweeping attempt was drafted on a large scale to contain spreading Federal bureaucracy and to allow States to handle their own programs. I applaud the administration's efforts as far as they go. However, the administration's bill would be mandatory—as I see it, an approach doomed. I fear, to failure inasmuch as some States are not ready to run their own programs with the inevitable constituent pressures and, more importantly, planning skills that they might not have yet developed. Many States are ready for the opportunity—some are not.

But, perhaps, we, in Congress, and the administration may be missing the forest for the trees.

As I listened to the testimony of the Budget Committee witnesses on this issue, I came to realize that there was another alternative, as yet unexplored. Why not allow States to choose? Why

not let those States ready to assume the responsibility of educational planning and management opt to take advantage of a categorical block grant approach?

After the hearings, I approached a few of my colleagues to bounce this idea around. I was encouraged by their response. I spoke with Senator BELLMON who said he wanted to be part of such an effort. That is why we are here today.

Senator BELLMON and I have directed extensive staff work to develop an optional education block grant program. As we explore the initial thrust of an optional approach, it appeared to us that perhaps the administration's block grant program was not extensive enough. The administration grouped only those programs which are formula-related, rather than philosophically or functionally related. Therefore, we have expended a great deal of effort to devise a block grant approach which we believe will be even more attractive than the administration's bill.

For example, today vocational related education programs are administered in several different categorical grant programs. We have chosen to group them all under one title in our legislation, letting States decide their own priorities within those program areas. Certainly, the result should be a savings in administrative efforts, leaving more money for learning purposes. What could be better to State education planning agencies than to reduce administrative headaches directed from Washington. Obviously, more money would be free to be used the way it was intended—to educate our young people.

Senator BELLMON and I are also thinking of grouping the programs offering services to the "high-cost" students: the disadvantaged, the handicapped, the neglected, or delinquent. A point to be emphasized is that the Domenici-Bellmon bill would require all States to receive at least the same moneys as they now receive and also the bill would require the money to continue to be targeted to those students to whom it was originally intended. Our desire is to merely allow more education for the dollar. The expenditures for administrative costs will, hopefully, be minimized.

The Domenici-Bellmon bill will be ready in late June, but we wanted to publicly state our intentions today so that educators—those from the States who are interested in this proposition—can begin to think about our proposal. Senator BELLMON and I also plan to testify before the House Subcommittee on Elementary, Secondary, and Vocational Education, chaired by Congressman QUIE, when that committee is considering the administration's bill. We hope that State educators, and our colleagues, will respond with some good ideas of their own. We would like to know what programs they would like to see included in a block grant program.

Mr. President, the voters polled for their views during the primary elections this spring have indicated their strong desire to minimize Washington's control over their lives. I also believe the people should have more control over our publicly financed programs. As our edu-

cation programs touch every American, it seems a good place to begin.

In April of this year I polled the educators in New Mexico for their views regarding a block grant approach on an optional basis. The idea was enthusiastically received. It is obvious to me that New Mexico will be ready to run its own programs, and that many others will join when they are given the opportunity to elect to take the block grant rather than the categorical program.

Americans have voiced their preference for governmental decentralization more and more loudly these past few years. They feel they need to run their own programs. What is good for Florida is not necessarily applicable or good for Alaska, for example. I believe we now have the opportunity if we, in Congress, conscientiously and responsibly respond to the basic desires of our constituency.

Mr. President, in summary, I believe a mandatory block grant program is doomed, but I think, indeed, we will be hard-pressed not to give the option to those States who want it under a well-defined process which permits them to prepare themselves in advance.

That is the difference in our approach and block grants of the past.

We will have the categorical grant plan running for those who want it. For those States who are ready, they can elect or opt to take the block grant.

Mr. President, I yield to my friend from Oklahoma (Mr. BELLMON).

Mr. BELLMON. Mr. President, before I begin my remarks, I want to give great credit to the distinguished Senator from New Mexico (Mr. DOMENICI) for conceiving the idea of an optional grant program for education, and perhaps in other areas. He has, I believe, done a real service to the Senate, the Congress, and the whole country by coming up with the idea.

I am confident that once the legislation has been proved and the idea is understood, it will gain rapid support in both Houses of Congress and throughout the country.

I also wish to commend the staff of Senator DOMENICI, as well Dick Woods of my staff, and Dr. Chambers of the Office of Education, who have done a yeoman's service in the work that has been done already on this bill.

This, Mr. President, is a sound, positive approach to a very difficult problem and I am pleased to join with Senator DOMENICI in introducing legislation to give each State the option of electing to receive certain Federal financial assistance for educational purposes in a consolidated manner, rather than in categorical ways as is now the law. While it is not yet time to discuss the details of this legislation, it is appropriate that we should articulate the ideas which will underlie the option.

The concept of consolidation is an exciting one. It provides a vehicle for the simplification and decentralization of administration of Federal programs. The bureaucratic burden under which educational programs usually suffer is thereby lessened. State and local educational agencies, rather than remote regional or Washington bureaucracies, are responsible for the basic decisions and program

actions with which they must live. Instead of having a multitude of categorical programs, each with its own funding and administrative peculiarities, programs may be grouped logically for administrative ease.

With a consolidated program, the focus can become State and local control. Given the enormous differences in local needs and conditions that we encounter in this country, that is a flexibility which can be appreciated. It is also a significant incentive for the development of responsibility for education at the grassroots. State and local priorities can be established and met with the result being the kind of program relevance and effectiveness which is not always possible with categorical programming. States can rise or fall on the basis of their own planning and effort, and no Federal scapegoat can be blamed for poor results.

Consolidation represents a potential turning point in the funding of Federal educational programs. For more than two decades, Federal Government initiatives created many programs of educational aid to the States and local education agencies until we now have all over 100 separately authorized program activities in the Office of Education. Today, there is Federal Government support for about 7 percent of the total cost of elementary and secondary education. Most of that support flows through many narrow categorical programs. It is distributed through the States to local educational agencies using formulas that contain such factors as school age population and income levels of students' families. As responses to national priorities, these remedies have grown into a web of administrative regulations and paper work, causing school systems to devote more time and manpower to meeting Federal requirements and completing necessary paperwork. School administration became more a matter of satisfying rigid requirements and shouldering administrative burdens than a creative process for insuring quality education to meet local needs and objectives. Success in this system often depended largely on the ability to play the grantsmanship game, and some school districts were unable to play it successfully.

It is important to stress that an optional consolidation approach, such as the one Senator DOMENICI and I will introduce, does not mandate that every State adopt the new method of financing. Conditions and preferences in some States may suggest that a continuation of categorical funding with attendant Federal Government oversight is best. Some States may not be ready to draw up and implement a plan to administer Federal funds in accordance with principles that will insure that funds will not become simply general aid. Other States may wish to wait and watch the efforts of those who do exercise their option. But those States which want to strike out on their own, free from the strictures of remote supervision, will be able to do so. In our proposal, they will be held accountable for results, so there need be no concern that the optional consolidation will produce a costly and tragic boondoggle.

Those who may be concerned that the consolidation approach will serve to reduce the Federal commitment to education need not worry. No State which exercises this option will lose money. Nor should there be any concern that consolidation will be used as an excuse to avoid responsibility for the special educational needs of particular groups, such as the disadvantaged and the handicapped. Special "hold harmless" and maintenance of effort requirements will insure that these obligations will continue to be met. Local educational agencies will be protected by provisions for flow through of money. It will not be necessary for States to enact special legislation in order to exercise this option.

While some proposals for consolidation have chosen to lump as many as 2 dozen programs into a single block grant, our approach will group programs into clusters which are logically related in order to create several blocks. One cluster may include such high cost students as the disadvantaged, migrants, Indians, and the handicapped. Another grouping would merge vocational, adult, and career education programs. Special projects—such as environmental education, gifted and talented education, metric education, alcohol and drug abuse, ethnic heritage and women's equity—would constitute another block. Finally, administration, interstate cooperation, and planning activities would be funded in a separate category. Flexibility within each category will allow States and localities to fashion educational programs more nearly in accord with needs than is now possible under categorical programming.

Consolidation will undoubtedly create anxieties among supporters of specific categorical grant programs, since the priorities for funding will rest with State and local agencies. If a program is a legitimate priority within a State, it will undoubtedly continue to receive funding commitment under the consolidated approach. The proliferation of small categorical programs has caused local education agencies to expend, in some cases, more time and effort applying for funds than the funds were worth. Consolidating the programs into a single competitive process at the State level will significantly reduce the cost in manhours.

An important feature of this new legislation will be the requirement of a participatory planning process within each State which chooses to receive its Federal funds in the consolidation grant. The views of interested citizens, constituent groups, local education agencies, units of local government and appropriate State agencies and organizations will be solicited in the process of developing a comprehensive State plan for the expenditure of this Federal money. The resulting proposed comprehensive State plan will have to be made available to all interested parties, and public comment on the plan accepted. The same publishing and comment requirements will apply to regulations issued by the States. These are powerful remedies for the often unthinking and unresponsive actions of distant bureaucracies. It is important to point out that the Federal Office of Education will not have the authority to approve comprehensive State plans or to

create extensive Federal guidelines. However, since there is a need to know if State administration and planning is effective, the U.S. Office of Education will conduct an evaluation of consolidated administration and submit it to the Congress for its use when it considers whether or not to renew consolidated legislation. In this way, there will be an important safeguard against the perpetuation of ineffective legislation.

Since those States which elect to exercise the consolidated grant option will need some time to prepare for the change, they will be eligible to receive a 1-year planning grant to provide funds for the transition. This necessary "get-ready" time will allow States to anticipate problems which otherwise might jeopardize consolidation.

Each local educational agency and the State education agency will conduct an annual program evaluation. Program evaluation reports will be used as a basis for program improvement and for updating the State and local comprehensive plans. Here again, the emphasis will be upon the development of local and State capability and responsibility, rather than dependence upon outside expertise and judgment.

Mr. President, in summary, Senator DOMENICI and I feel that the option to receive Federal education assistance as a consolidation is an important choice for the States to have. It would put State and local agencies in the driver's seat, permitting an intelligent flexibility which has been lacking in present categorical arrangements. It would push educational program decisionmaking down to the State and local levels, where the influence of the citizenry could not be ignored. It would allow States and local education agencies to develop their own capabilities, instead of merely following directions from on high. It would reduce costly paperwork, freeing educators to contribute to the learning process. It would strengthen responsibility at the grassroots level through accountability requirements. It would engage the States in full-fledged planning, a capability which might be transferable to other State activities. It would carry with it evaluation requirements which will protect the taxpayers. It would not impose consolidation upon any State which did not want it or did not find itself ready to undertake such a responsibility.

Senator DOMENICI and I will be pleased to offer this choice to the States through new legislation which will broaden the range of administrative and decision-making opportunities now available. We hope it will find the support it deserves.

The PRESIDING OFFICER. Under the previous order, the Senator from Louisiana is recognized.

DISAPPROVAL OF ENERGY ACTION NO. 3

Mr. JOHNSTON. Mr. President, I move that the Committee on Interior and Insular Affairs be discharged from further consideration of Senate Resolution 449, a resolution to express Senate disapproval of Energy Action No. 2, an executive branch proposal to modify the small refiner entitlement purchase exemption.

Mr. President, I ask unanimous consent that Bob Szabo, of my staff; Bill Van Ness, and Ben Cooper, of the Interior and Insular Affairs Committee staff, be granted privileges of the floor at all times during the consideration of this matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Pursuant to Public Law 94-163, the debate is limited to 1 hour on this motion. Who yields time?

Mr. JOHNSTON. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, this matter was referred to the Committee on Interior and Insular Affairs shortly after May 12, the day Energy Action No. 2 was sent to Congress. Owing to the compressed time schedule under which we were placed, the Interior and Insular Affairs Committee had to act with great haste. The committee convened to hold hearings on this matter on May 24, just 3 days ago. After the hearings, we called a markup session of the committee with virtually no notice, because the time limitations presented virtually no time for notice. The committee acted, I believe unanimously, in requesting the Federal Energy Administration to withdraw this action because we felt that the action was not appropriate; that it would be harmful to the small refiners; and that, accordingly, the FEA ought to withdraw its action and come back with a new rule.

In the spirit of compromise, we took that action as an advisory action. We took that action for two reasons: First, to act in the spirit of conciliation, and, second, because we had a markup quorum but we did not have a full quorum of the Interior and Insular Affairs Committee present. That is the reason that the Interior Committee is not here before this Senate with a report formally disapproving this action. However, I submit that the action of the Interior Committee is, in effect, a disapproval of this action of FEA.

Mr. President, this is a fairly technical subject, but I believe we can put it in terms that will make it simple enough for all Senators to understand.

Pursuant to the price control law, the Emergency Petroleum Allocation Act of 1973, crude oil is under price control. What we call old oil is priced at \$5.25 a barrel. That consumes about 36 percent of the national supply. What we call upper tier domestic oil is priced at about \$11.28 a barrel, and imported oil at \$13.50 a barrel. There is a great disparity between old oil on the one hand and new domestic and imported oil on the other hand—almost \$8 a barrel difference. In fact, the difference is more than \$8 a barrel.

In order to make price regulation work, it was necessary for the FEA, pursuant to that Emergency Allocation Act, to come up with an equalization program so that refiners who had sources of old oil would not be at a competitive advantage as against those who had new oil, because those with new oil have to pay as much as \$8 a barrel more. It was essential that we have that kind of equalization program.

Therefore, FEA came out, pursuant to statute, with what we call the entitlements program, whereby holders of lower-priced old oil would have to buy entitlements. In other words, persons with a large share of old oil would have to send money to those who were the owners of new high-priced oil. In the process an equalization of the price would result.

Mr. President, after this program had been in operation for some period of time, we found that small refiners who had an untoward economic scale of operation were put at a competitive disadvantage because their price per barrel of refining oil was relatively high; that this entitlements program was acting to put them at a competitive disadvantage; that it was acting in such a way as to put many of them actually out of business unless they received some kind of relief from the Federal Energy Administration.

Accordingly, Mr. President, we came to the floor of the Senate last year and passed the Small Refiners Exemption law, which had the effect of exempting the first 50,000 barrels of oil of any refiner who was classified as a small refiner, which was defined as a refiner of 100,000 barrels a day or less. He had his first 50,000 barrels of old oil exempted from the duty of buying entitlements.

Mr. President, we are frank to say that we were not able to fine tune that exemption here on the floor of the Senate. There was not a data base available to us that told us precisely where we ought to draw the line at what a small refiner should be. Should he be 100,000 barrels? Should he be 50,000 barrels? Should he be 25,000 barrels? We were not able to act with that amount of precision. All we knew, Mr. President, was that the smallest refiners were at a competitive disadvantage and were threatened with being put out of business by the Emergency Allocation Act and the entitlements program that went with it.

It was our best judgment at that time that a small refiner ought to be at a 100,000-barrel capacity and that the first 50,000 barrels of old oil ought to be exempt from the duty of buying entitlements.

Frankly, we were not sure, Mr. President, as to where we ought to draw that line. Some criticized it and said, "Well, maybe that is too high. Maybe it is inequitable. Maybe it gives a competitive advantage to those who do not need the competitive advantage." Accordingly, we put in an escape clause in the Energy Policy and Conservation Act which passed in December of last year and became effective on December 31, 1975. In any event, there was an escape clause put in that bill which said that FEA could modify the exemption if it worked to a competitive disadvantage to the non-small refiners, or if it was unfair or inequitable.

The key words there are "modify" and "unfair and inequitable."

In the latter case, these are very broad words, giving to the FEA what we wanted to give them, which was a very broad discretion concerning how they should modify the exemption. On the other hand, Mr. President, we gave them no

power to repeal or to revoke the small refiners exemption. As a matter of fact, that is precisely what FEA ended up doing: revoking the small refiners exemption.

In any event, Mr. President, that was the thinking of the Committee on Interior and Insular Affairs and it was the thinking of the Senate when we passed that small refiners exemption.

On December 31, 1975, the exemption came into operation. But, Mr. President, by February 28, only 2 months later, FEA filed a notice of rulemaking to modify or to revoke this exemption.

In other words, without giving the exemption time to work; without securing the necessary data as to its fairness or unfairness, its equitability or lack of equality, FEA filed its rule February 28. As a matter of fact, when FEA filed its original notice of rulemaking, the proposed rule was very much different from the rule finally adopted and sent to Congress on May 12.

The FEA filed its notice of rulemaking only 2 months after this exemption had gone into operation, so there was virtually no data base on which to base any judgment of the FEA. As a matter of fact, by the time FEA finally sent to the Hill, on May 12, their Energy Action No. 2 containing this new rule, there was virtually no data on which one could base a reliable decision.

I presided over the hearings, Mr. President, on May 24. Let me give the Senate the information which was not contained in the data base that FEA provided us.

First. Neither FEA nor anyone else was able to furnish the market shares of refiners or the shift in those market shares which was effected by this exemption.

Second. The profits of refiners affected by the exemption were not listed. If something is unfair or inequitable or results in an undue profit, we ought to know that. Those figures are available or would be available given proper study or research.

That kind of study or research has not been done here, and a sufficient period of time has not elapsed within which to secure that information.

Third. The rates of return under Special Rule 6 versus the previous years were not furnished to the committee.

Fourth. It was not determined what impact the exemption had on product prices. In other words, how much of a price reduction did the exemption result in? We were not furnished that information.

Fifth. No data was furnished to justify the contention that the rules resulted in hardship on branded dealers. As a matter of fact, we heard some testimony from branded dealers, but when we tried to determine whether there was any competitive disadvantage to the dealers resulting from this rule, it was like grappling with a fog, because no data was available.

Sixth. We were not told if the exemption resulted in higher profits for refiners or for dealers, or in lower product prices to consumers.

In effect, Mr. President, we were asked to accept Federal Energy Action No. 2 on faith alone and without any data on which to justify that conclusion.

Mr. President, there are at least three

good reasons why the Senate ought to take the action which this resolution proposes—at least three reasons why we should disapprove this Federal energy action.

The first is that the action proposed by FEA is a revocation of the small refiners' exemption, and not a modification.

That means that whereas FEA feels, and perhaps properly so, that the first exemption went too far, this one does away with the exemption altogether even though small refiners of 10,000 barrels and less, which everyone agrees need some kind of help from FEA, even those are not taken care of under this FEA action. And, Mr. President, a small refiner of 10,000 barrels or less, simply, in my view, cannot survive without some kind of help, if he is a buyer of entitlements.

We tried to work this thing out with the FEA. After our committee meeting, we recommended to FEA that they withdraw this proposal and that we try to work out a compromise proposal.

Frankly, I think we could have worked out a compromise proposal fairly easily. What were the outlines of that compromise proposal? Well, I am not prepared to give it precisely with chapter and verse, because the committee did not take a position on the compromise. But I would say the chief element on which we disagreed, or at least on which I disagreed, was that the small refiner of 10,000 barrels a day or less was given absolutely no consideration for an exemption. Unless we have some exemption in the law, the FEA action amounts to a revocation, which is not authorized under the law, and it is an inequitable revocation at that because it does not take care of the small refiner.

In other words, Mr. President, we are not asking for a perpetuation of the present exemption. We are asking that FEA draw a new rule to present to Congress: a new rule that will equitably take care of the small refiners; that will allow them to exist in this price control market; which will not cost the larger refiners or the refiners in a zero position an undue amount of money, but which will allow for the survival of the small refiners.

We do not want this market to be composed only of large Exxons and 200,000- and 300,000-barrel-a-day refiners. We do not want to run the small ones out of business. There is a place for the small refiners. The small refiners could have survived in a market not controlled by price controls. They cannot survive in a controlled market, or many of them cannot do so, unless they receive some kind of help from Congress and from the FEA.

Mr. President, the second reason for taking the action proposed today is that in my view and in the view of many lawyers, both on the staffs of committees here and in private practice, the action of the FEA is subject to Federal court injunction in that the action taken contravenes due process of law under the fifth amendment.

The reason, Mr. President, is that the time given the small refiners to testify on this matter simply was not sufficient. After holding the matter in abeyance from February 28 until May 12, asking for comments, FEA finally, on May 12,

sent the action to Congress. Not until May 18, or 6 days later, did FEA print their proposal in the Federal Register. There is absolutely no excuse and no reason for holding this matter without public notice for a period of 6 days.

Only 3 days after the proposal was published, hearings were held in the House of Representatives. In other words, FEA held the rule 6 days and then allowed notice, from the time it is printed in the Federal Register until the time hearings were held in the House of Representatives of only 3 days. Only an additional 3 days transpired before the Senate held hearings.

Mr. President, if that does not violate due process under the Constitution of the United States, I can tell you this: it is not fair; it is not equitable; it is not right; and I do not think the Senate ought to countenance FEA's action in proposing this action without proper notice to everyone concerned.

Furthermore, it is subject to legal attack, as previously mentioned, because it is a revocation and not a modification. There is no authority listed in the Emergency Petroleum Allocation Act or in the Energy Policy and Conservation Act, which contains this small refiners exemption, which would allow FEA to revoke this rule. When we put in the escape clause, and I was on the conference committee that drew that escape clause, we wanted to make it possible for FEA to fine tune, modify, change, and amend the small refiners exemption to make it fit precisely the kind of limits and dimensions that small refiners ought to have with the kind of protection they ought to have. We gave no authority to repeal or to revoke this rule. But that is precisely what FEA has done.

So what does this mean, Mr. President? It means this: that the best way to perpetuate the present rule is probably to go along with the FEA's action. That would result in a suit for injunction being filed by very good lawyers uptown. The injunction would undoubtedly be granted and during the period of injunction the present Federal energy rule would remain in effect. Meanwhile, there would be no opportunity for FEA or Congress to come to some kind of meaningful and equitable modification of the present rule.

The third reason, Mr. President, that the action of the FEA should be thrown out—and I hate to say this, Mr. President—is simply because FEA has been totally nonresponsive and noncommunicative to the committee of Congress. Mr. President, we complain here in the Chamber and we read complaints in the press about the nonresponsive bureaucracy. This is the prime example of that kind of nonresponsive bureaucracy.

We have asked repeatedly, Mr. President, in the Committee on Interior and Insular Affairs for at least 7 days' notice of this kind of proposal so that we would have the opportunity to consider it; to let our staff look at it; to study it; and if necessary; to hold hearings that would be meaningful hearings so that we could at least be equal partners with the bureaucracy in trying to form rules which are going to govern this country under legislation enacted by this Congress. But,

Mr. President, no such cooperation has been forthcoming and no sufficient notice was given before the rule was sent to Congress. After it was sent up and the committee disapproved the rule and asked FEA to revoke it, the answer was they were going to proceed full speed ahead.

Mr. President, I do not mean to say that FEA needs to be taught a lesson—perhaps that it is the inappropriate way to put it—but at least FEA ought to get a message from the action which I hope this Senate will take today, and that is to let us work together; let us be communicative, Congress with FEA and FEA with Congress, so that we can take action which is in the interest of this country and not take it unilaterally.

Mr. President, I ask unanimous consent that Senate Resolution 449; the FEA proposal on Special Rule No. 6 from the May 18, 1976 Federal Register; an FEA briefing paper dated May 21, 1976 be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

S. RES. 449

Resolution to disapprove energy action numbered 2, an executive branch proposal to modify the small refiner entitlement purchase exemption

Resolved, That the Senate does not favor the energy action numbered 2 transmitted to the Congress on May 12, 1976.

FEDERAL ENERGY ADMINISTRATION,
Washington, D.C., May 12, 1976.

Re Modification of Small Refiner Entitlement Purchase Exemption (Energy Action No. 2)

HON. NELSON A. ROCKEFELLER,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: On February 28, 1976, the Federal Energy Administration gave notice of a proposal which, among other things, would revoke Special Rule No. 6 to the Appendix of Subpart C, Part 211 of Title 10, Code of Federal Regulations (41 F.R. 1044, January 6, 1976) which implements the small refiner purchase exemption and increase the amount of entitlement benefits granted through the small refiners bias. Written comments from interested persons were invited through March 24, 1976, and a public hearing regarding the proposal was held on March 23 and 24, 1976.

FEA has now completed its consideration of all the information available in this proceeding and has determined that Special Rule No. 6 which implements the small refiner purchase exemption should be revoked and the small refiner bias increased for all small refiners. As required by section 455 of the Energy Policy and Conservation Act, Pub. L. 94-163 (EPCA), which added section 12 to the Emergency Petroleum Allocation Act of 1973, as amended (EPAA), the amendment adopting these changes is herewith submitted to the Senate and is also being concurrently submitted to the House of Representatives, for Congressional review pursuant to section 551 of the EPCA.

FEA's determinations supporting the revocation of Special Rule No. 6 and the adjustment to the small refiners bias, which are required by section 455 of the EPCA, are set forth in the preamble to the enclosed amendment.

As Administrator of the Federal Energy Administration, I have been delegated by the President all authority granted to him by the EPAA (E.O. 11790, 39 F.R. 23185, June 27, 1974).

Unless disapproved by the Congress as provided by section 551 of the EPCA, this amendment will be effective upon expiration of the fifteen day review period under section 551.

Sincerely,

FRANK G. ZARB,
Administrator.

TITLE 10—ENERGY; CHAPTER II—FEDERAL ENERGY ADMINISTRATION; PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS [Revocation of Special Rule No. 6 and Adjustment to Small Refiner Bias Under Entitlements Program]

On February 28, 1976, the Federal Energy Administration issued a notice of proposed rulemaking and public hearing (41 F.R. 9391; March 4, 1976), to amend Title 10, Part 211, of the Code of Federal Regulations with respect to the domestic crude oil allocation or entitlements program (hereinafter referred to as the "entitlements program") set forth at 10 CFR 211.67. Comments on the proposed amendments were invited through March 24, 1976, and 96 written comments were received by FEA. Public hearings were held on March 23 and 24 at which 30 persons presented statements.

In this proposal, FEA specifically requested comments on the validity of its tentative determinations that the exemption from payments under the entitlements program for certain small refiners as provided in subsection 4(e) of the Emergency Petroleum Allocation Act of 1973 ("EPAA"), as amended by the Energy Policy and Conservation Act ("EPCA"), and as implemented by Special Rule No. 6 in the Appendix to Subpart C, Part 211 of Title 10, Code of Federal Regulations, seriously impairs FEA's ability to attain the objectives set forth in section 4 (b) (1) of the EPAA, and results in an unfair economic or competitive advantage for certain small refiners with respect to other small refiners. FEA further invited comments on whether all small refiners including sellers and purchasers under the entitlements program should receive increased benefits by means of an adjustment to the small refiner bias and whether small refiners with a capacity of less than 10,000 barrels per day should be fully exempted. Finally, FEA solicited comments on the procedure for granting exception relief under the entitlements program and whether exception decisions should be made effective for longer periods.

FEA received numerous comments from all sectors of the petroleum industry including major and small and independent refiners, trade associations, branded and non-branded independent jobbers and others concerning the proposed amendments. FEA is satisfied that the comments received fairly represent the broad range of interests which would be affected by any such changes in the benefits received by small refiners under the entitlements program.

The amendments adopted herein would eliminate the purchase exemption for certain small refiners by revoking Special Rule No. 6 and would increase the amount of additional entitlements issuable to all small refiners (whether entitlement purchasers or sellers) under the small refiner bias. These amendments will not become effective, however, if disapproved by either House of Congress under the procedures set forth in section 551 of the EPCA.

ADJUSTMENT TO THE SMALL REFINER BIAS

In conjunction with its modification of the small refiner entitlement purchase exemption discussed below by the revocation of Special Rule No. 6, FEA is hereby adopting an adjustment to the small refiner bias that increases the number of additional entitlements provided for all small refiners. In the proposal, FEA specifically invited comments as to whether the amendment adopted in this proceeding should simply increase the amount of the small refiner bias for all small refiners, which would place all small refiners

on the same competitive basis under the entitlements program. At the public hearing and in the written comments on the proposal numerous small refiners, both entitlement purchasers and sellers, supported this approach and the overwhelming majority also supported an increase in the small refiner bias for both sellers and purchasers. The unanimous view expressed in this regard was that it was inequitable to favor one class of small refiners over another as far as benefits under the entitlements program are concerned.

FEA's analysis of this issue indicates that an increase in the small refiner bias in conjunction with the revocation of Special Rule No. 6 has greater merit than any other alternative course of action available to the Agency as to the overall status of small refiners under the entitlements program. This approach both eliminates any special treatment afforded to small refiner entitlement purchasers and comports more fully with the general concern as to the competitive viability of small refiners expressed throughout the EPAA and the EPCA.

FEA initially adopted the small refiner bias after a significant amount of analysis and public comment on the issue when the entitlements program was instituted in late 1974. At the time FEA determined that the historical preference granted to small refiners under the oil import program as in effect in 1972 was sufficient to preserve the competitive viability of this class. However, over the first year in which the program was in effect FEA received substantial evidence that the amount of the bias may in fact not be adequate for its intended purpose. For example, a large number of small refiners have been forced to seek exception relief since, for these firms, bias amounts were not sufficient to enable them to compete effectively or even in certain cases to maintain their financial viability. Due to the more restrictive exception standards for entitlement sellers as opposed to entitlement purchasers, FEA has received numerous indications that many small refiner entitlement sellers are also in need of additional bias amounts to remain competitive and financially viable.

Many operating and other costs for these firms have increased since 1972, and thus the bias amounts may not be representative of the current competitive disadvantages of this class and the industry may have generally become more competitive due to increased consumer sensitivity to the higher prices.

In addition, FEA is basing its determination to increase the small refiner bias to a significant extent on the congressional concern for small refiners expressed generally, both in sections 403 and 455 of the EPCA and in the legislative history connected with the passage of the EPCA.

Therefore, FEA is hereby adopting an increase to the small refiner bias on the following basis, in conjunction with the revocation of the small refiner exemption. The small refiner bias would be modified for firms with volumes of crude oil runs to stills of less than 100,000 barrels per day by increasing the benefits at the 10,000 barrel per day crude run level by an additional 2¢ per gallon and by a declining additional amount as the refiner's volume of crude oil runs increases. At the 100,000 and up barrel per day run level, no increase over the present bias amounts is provided for. These additional benefits are expressed in terms of incremental entitlements that would be issued to small refiners based on their crude run levels. For example, a 10,000 barrel per day refiner under the bias presently in effect receives 123.8 additional entitlements for each 1,000 barrels of its crude runs up to 10,000 barrels per day; under the revised bias set forth herein such a small refiner would receive an additional 228.3 entitlements for each such 1,000 barrel per day of his crude runs, or an increase of 105 entitlements.

Under the revised bias, FEA estimates that a refiner running 10,000 barrels per day will receive total benefits approximating 4.4 cents per gallon; a refiner running 30,000 barrels per day, 2 cents per gallon; a refiner running 50,000 barrels per day, .8 cents per gallon; and a refiner running 100,000 barrels per day, .24 cents per gallon, which latter amount is the same amount receivable under the bias currently in effect.

REVOCATION OF SPECIAL RULE NO. 6

Authority for the small refiner purchase exemption implemented by Special Rule No. 6 and the revocation thereof adopted herein is granted to FEA pursuant to sections 403 (a) and 455 of the EPCA. Section 455 of the EPCA amends the EPAA by adding a new section 12(g) which provides that:

(g) Notwithstanding the provisions of subsection (e) of section 4, the President may, if he determines that the exemption from payments for certain small refiners required by such subsection—

(1) results in unfair economic or competitive advantage with respect to other small refiners; or

(2) otherwise has the effect of seriously impairing the President's ability to provide in the regulation under section 4(a) for the attainment of the objective specified in section 4(b)(1)(D) and for the attainment of those other objectives specified in section 4(b)(1); submit, in accordance with the procedures specified in section 551 of the Energy Policy and Conservation Act, an amendment to modify the regulation under section 4(a) with respect to the provisions of such regulation as they relate to such exemption. Such amendment shall not take effect if disapproved by either House of Congress under the procedures specified in such section 551.

On the basis of its preliminary findings and analysis of the competitive benefits accruing to exempted small refiners, FEA indicated in the February 28 proposal its tentative conclusion that any crude cost advantage accruing to a small refiner entitlement purchaser exceeding one cent per gallon would constitute an unfair economic or competitive advantage within the meaning of section 12 (g) of the EPAA. Thus, an increase in the small refiner's bias was proposed by FEA which would have limited permitted crude cost benefits flowing from that adjustment to one cent per gallon over and above the amounts received under the small refiner bias if the small refiner exemption were also revoked.

In the proposal, FEA set forth the range of benefits accruing to small refiners from the operation of the exemption for the months October through December 1975. The crude cost advantages received by small refiners under the exemption during that period ranged as high as 10 cents per gallon, and in some isolated cases higher and monthly benefits from the exemption were in excess of \$4,000,000 in one instance. Benefits of this magnitude were also received by exempted firms for the months January and February 1976.

The following table shows for the months April through September 1975 during which Special Rule No. 6 was not in effect the number of small refiner entitlement purchasers that applied to FEA's Office of Exceptions and Appeals for relief from entitlement purchase requirements.

| Entitlement exception relief for April through September 1975 | | | |
|---|--------------------|----------------------|--|
| | Totally exempted * | Partially exempted * | |
| Number of applicants for relief for April-Sept. 1975 | 42 | 4 | |
| Number of firms receiving total relief | 16 | — | |
| Number of firms receiving partial relief | 10 | — | |

* If a firm was partially exempted in any

month it is counted in the partially exempted column.

Thus, it may be fairly assumed that of the total number of small refiner entitlement purchasers which have received benefits from the exemption, only 26 of these small refiners were found to be operating at below their historical level of return on sales as a result of the requirement to purchase entitlements, so as to warrant the grant of exception relief.

Impact on Competition

Information currently available to FEA suggests that the exemption as implemented by Special Rule No. 6 is resulting in unfair competitive advantages in favor of exempted small refiners over other small refiners.

Comments from small refiner sellers of entitlements and marketers supplied by such refiners cited severe price disparities as against exempted small refiner entitlement purchasers with which they have been competing directly. They stated that under Special Rule No. 6, the market shares of exempted small refiners and marketers supplied by them were tending to increase as a result of benefits conferred by the exemption.

A large number of those commenting supported FEA's preliminary conclusions that competitive imbalances among competing small refiners are occurring and that the continuation of exemption benefits to the class of exempted small refiner entitlement purchasers will inevitably contribute to further competitive distortions among small refiners generally. Some small refiners benefitting from the exemption having access primarily to upper tier domestic supplies advocated limitation of the exemption because competitive disadvantages were being experienced when such firms compete with other exempted small refiners having access to primarily lower tier oil. Other small refiners argued that an exemption operating in favor of only some small refiners constitutes unwarranted preferential treatment among all small refiners and impacts unfavorably upon all other refiners. While a significant number of small refiners commenting advocated granting additional benefits to small refiner entitlement sellers, these refiners uniformly opposed any exemption which benefited any single group within the class of small refiners.

Many of the comments stated that the full exemption provided by Special Rule No. 6 is having effects in the marketplace which are inconsistent with the EPAA objective in section 4(b)(1)(D) of fostering an economically sound and competitive petroleum industry. In addition, FEA has determined that the current exemption constitutes a serious impediment to the attainment of the EPAA's objectives in that section for the preservation of the competitive viability of various sectors of the petroleum industry including small refiners, their marketers and branded independent marketers. Comments from branded independent marketers were generally to the effect that marketing outlets of exempted small refiners with which they compete were substantially undercutting retail gasoline and distillate prices and thereby creating competitive distortions in the marketplace. They stated that the impact of an exemption is exaggerated in the context of a highly competitive retail market caused by increased consumer sensitivity to price and an abundance of supplies. Many branded retailers which compete directly with exempted small refiners marketing at the retail level alleged that they are unable to withstand the competitive pressures being exerted by such small refiners.

Branded independent marketers, and the national and regional associations representing them, cited substantial competitive difficulties attributable to the exemption, and advocated its complete elimination. In this regard, branded marketers were uniformly supported by their major oil company suppliers. These firms voiced their concern that

the market shares of independent branded marketers and major oil companies in general are being reduced. Their comments also recognized that increased price sensitivity of the consumer, the softness of the product market, the imposition of lower cost marketing techniques and the competitive impact of offering self-service rather than full service gasoline retail sales were also significant factors contributing to changes in market share. Many firms commenting cited the overall negative impacts being exerted on their marketing operations and indicated that the additional unfavorable impact of granting exemption benefits to competitors is unnecessary and a serious intervention in the operations of the market. Comments were submitted which suggested that the average price differential between major brand and independent brand gasoline varied on a regional basis and that an independent brand advantage was evidenced with such advantage being largest in the areas where small refiner entitlement purchasers in competition with major brands have been exempted by Special Rule No. 6.

Groups representing branded jobbers stated that, while many independent branded marketers do not compete directly with exempted small refiners, in those areas where a marketer has to compete with a small refiner, the marketer is faced with a significant competitive disadvantage and small refiners have in fact expanded their market share in these areas because of their ability to undercut substantially branded prices. Such groups suggested that the exemption be eliminated entirely and that relief where appropriate be given on an equitable basis to small refiners by means of FEA's exceptions procedures. Short of complete elimination of the exemption, these firms indicated support for FEA's one cent per gallon limitation as proposed.

Impact on market

FEA has also determined that continuation of the full exemption constitutes unnecessary interference with market mechanisms and seriously inhibits FEA's ability to provide for the minimization of economic distortion and inflexibilities in the petroleum market under section 4(b)(1)(I) of the EPAA. Many comments maintained that where the impact of the exemption is felt it seriously distorts the economics of the market affected by providing benefits in the form of substantial crude cost advantages to one marketing entity over another. Small refiners benefitting from the exemption rebutted this by arguing that the full exemption provided by Special Rule No. 6 is not interfering with market mechanisms because of the insignificant market share of such firms.

Furthermore, they stated that they lack the flexibility to alter refining procedures or crude input to exploit any such competitive advantage. Such firms believe that their limited volume and type of products reduces the competitive influence that such small firms can have in the marketplace.

Numerous other small refiners, however, indicated in their comments that the exemption provides preferential benefits to small refiner purchasers to the detriment of small refiner sellers of entitlements. This is particularly evident in cases where such small refiners are in direct competition. Many argued for adjustments to the bias to provide additional benefits to all small refiners. Absent this type of adjustment, there was a substantial amount of support for FEA's proposed one cent per gallon crude cost differential limitation on the exemption to ease the substantial competitive imbalances that are occurring among small refiners.

Most major companies advocated a complete elimination of the exemption, stating that the class of small refiners as a whole is currently at a competitive advantage and that the granting to some small refiners additional benefits is excessive. While most of these firms opposed the exemption many agreed that the one cent per gallon differ-

tial proposed by FEA would limit to a substantial degree the market distortions arising from the full exemption.

FEA has determined that the substantial crude cost benefits granted to some firms by application of the full exemption contribute to disparities in prices among sectors of the industry thus impairing the Agency's ability to provide for equitable prices among sectors of the petroleum industry as contemplated by section 4(b)(1)(F). In addition, the substantial artificial crude cost advantages provided by the exemption may also tend to discourage economic efficiency in a general sense within certain sectors of the industry where the full benefits are in excess of the actual need, since uneconomic refineries would be enabled to continue in operation by virtue of the exemption. Thus, retention of the exemption would run counter to the objective provided for by section 4(b)(1)(H) of the EPAA.

Disincentives to Maximize Crude Runs and to Expand Capacity

In the public comment and hearing procedures, a number of firms stated that the small refiner purchase exemption as implemented by Special Rule No. 6 provided a strong disincentive to expansion of a small refiner beneficiary's refining capacity over the 100,000 barrels per day limit. In addition, since the first 50,000 barrels per day of a refiner's crude runs are exempted from entitlement purchase obligations under Special Rule No. 6, a similar disincentive exists to maximize crude runs above the 50,000 barrel per day level.

FEA believes that these disincentives are contrary to the objective of "economic efficiency" set forth in section 4(b)(1)(H) of the EPAA and also run counter to the objective provided for in section 4(b)(1)(I) of "minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms."

Agency's Determinations as to Small Refiner Entitlement Purchase Exemption

On the basis of the foregoing, FEA has determined pursuant to section 12(g) of the EPAA that the small refiner exemption from purchasing entitlements as currently implemented by Special Rule No. 6 under section 4(e) of the EPAA is resulting in unfair competitive advantages among small refiners and is seriously impairing FEA's ability to attain the objective set forth in section 4(b)(1)(D) of providing for "preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers;" the objective set forth in section 4(b)(1)(F) of providing for "equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users;" the objective set forth in section 4(b)(1)(H) of providing for "economic efficiency;" and the objective set forth in section 4(b)(1)(I) of providing for "minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms."

MODIFICATION OF EXCEPTION PROCEDURES

In the proposal FEA also requested comments as to the manner in which FEA's exceptions procedures with respect to the entitlements program should operate in the future. Specific comments were invited as to whether exception decisions should be made effective for longer periods than have normally been provided for by FEA and as to whether any other specific procedures re-

lating to the filing of an exception application should be facilitated.

FEA received numerous comments on these issues and has determined in conjunction with the amendments adopted hereby to provide that, except in unusual and extenuating circumstances, exception decisions under the entitlements program would be effective for a six-month period. This contrasts with FEA's practice in the past of providing for exception relief for two and three month periods. In addition, FEA is continuing its review of the standards which will apply in its exception decisions and the types of information required to be submitted by applicants, with a view to requiring the minimum amount of information needed in order to properly evaluate exception applications.

(Emergency Petroleum Allocation Act of 1973, as amended by Pub. L. 94-163; Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185).

In consideration of the foregoing Part 211, Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below, effective upon expiration of the fifteen day review period under section 551 of the EPCA, unless this amendment is disapproved by either House of Congress pursuant to the review procedures set forth in section 551 of the EPCA.

Issued in Washington, D.C., May 12, 1976.

MICHAEL F. BUTLER,
General Counsel.

1. Section 211.67 is revised in paragraph (c) to read as follows:

§ 211.67 Allocation of old oil.

(c) *Small refiner bias.* (1) In addition to the number of entitlements issuable under paragraph (a) of this section, subject to the limitation set forth in subparagraph (2) below, each small refiner with a daily average volume of crude oil runs to stills of less than 175,000 barrels for a particular month shall be issued the following number of additional entitlements for each day of that month: (i) for each small refiner with a daily average volume of crude oil runs to stills of 100,000 to 175,000 barrels, 1,258 entitlements less the number of entitlements obtained by multiplying the difference between that small refiner's daily average volume of crude oil runs to stills (in thousands of barrels) and 100 by 16.7733; (ii) for each small refiner with a daily average volume of crude oil runs to stills of 50,000 to 100,000 barrels, 2,079 entitlements less the number of entitlements obtained by multiplying the difference between that small refiner's daily average volume of crude oil runs to stills (in thousands of barrels) and 50 by 16.42; (iii) for each small refiner with a daily average volume of crude oil runs to stills of 30,000 to 50,000, 3,123 entitlements less the number of entitlements obtained by multiplying the difference between that small refiner's daily average volume of crude oil runs to stills (in thousands of barrels) and 30 by 52.2; (iv) for each small refiner with a daily average volume of crude oil runs to stills of 10,000 to 30,000 barrels, 2,288 entitlements plus the number of entitlements obtained by multiplying the difference between that small refiner's daily volume of crude oil runs to stills (in thousands of barrels) and 10 by 41.75; and (v) for each small refiner with a daily average volume of crude oil runs to stills of zero to 10,000 barrels, 228.8 entitlements for each 1,000 barrels of that small refiner's daily average volume of crude oil runs to stills.

(2) No entitlements shall be issuable under subparagraph (1) above with respect to any volume of a small refiner's crude oil runs to stills attributable to a processing agreement for the account of that small refiner with another refiner where the crude oil processed pursuant to that processing agreement is purchased from and the refined products produced under that agreement are

sold, directly or indirectly, to that other refiner.

(3) Each small refiner shall separately identify in its reports filed pursuant to § 211.66(h) of this subpart any volumes of its crude oil runs to stills not eligible (under the provisions of subparagraph (2) of this paragraph) for small refiner bias entitlements.

2. Special Rule No. 6 in the Appendix to Subpart C of Part 211 is revoked.

BRIEFING PAPER ON THE INCREASE IN SMALL REFINER BIAS AND REVOCATION OF CURRENT SMALL REFINER EXEMPTION

I. EXECUTIVE SUMMARY

The Federal Energy Administration has submitted to the Congress an amendment to modify the exemption of certain small refiners from the purchase of crude oil entitlements provided in Section 403 of the Energy Policy and Conservation Act (EPCA).

The amendment both revokes Special Rule No. 6 which currently implements the small refiner purchase exemption and adjusts the Small Refiner Bias in the Entitlements Program to provide added benefits to all small refiners with crude oil runs under 100 MB/D.

The current Small Refiner Exemption creates large competitive disparities among small refiners, since it provides some entitlement purchasers with large benefits but provides no benefits to entitlement sellers. This results in economic hardships levied upon those independent marketers supplied by non-exempt refiners when they compete directly with other marketers supplied by exempted refiners.

The FEA Modification will correct these competitive disparities, while at the same time meeting the intent of Congress by providing added benefits to all small refiners, scaled proportionately to correct for diseconomies of scale in refining.

The following materials describe and compare the current operation of the Small Refiner Exemption with the FEA Modification of the Bias.

All materials are based upon February entitlements data.

Effects will vary slightly each month with changes in the crude oil operations of affected refiners.

II. OVERVIEW OF ENTITLEMENTS PROGRAM

The Entitlements Program was adopted in November 1974 for the purpose of providing equal access to the benefits of price controlled domestic oil for all domestic refiners, through the purchase or sale of entitlements.

The program eliminates competitive inequities which would otherwise occur as a result of certain domestic refiners having disproportionate amounts of lower priced domestic crude oil in their supplies.

The Entitlements Program provides for a small refiner bias which is intended to preserve the competitive viability of this class of domestic refiners vis-a-vis large domestic refiners.

The EPCA in December 1975 provided for

a Small Refiner Exemption under which certain small refiners with large supplies of price controlled domestic crude oil (and therefore lower costs) have either been fully or partially exempt from the requirement to purchase entitlements, even though many of these small refiners were granted relief through the exception process.

The action being taken by FEA, in conformance with the EPCA, is intended to eliminate the competitive inequities created by the current small refiner purchase exemption which is set forth in FEA's Special Rule No. 6.

III. DESCRIPTION OF CURRENT EXEMPTION (SPECIAL RULE NO. 6)

The Entitlements Program requires refiners with more than their share of low cost domestic crude supplies to purchase entitlements from refiners with less than their share of domestic crude.

EPCA provides an exemption from entitlements purchase obligations for small refiners with 100,000 barrel per day capacity or less.

This exemption covers all purchase obligations up to 50,000 barrels per day of crude oil runs or domestic receipts.

This exemption covers a portion of purchase obligations from 100% at 50,000 barrels per day to 50% at 100,000 barrels per day of crude oil runs or domestic receipts and provides no exemption over 100,000 barrels per day.

IV. INEQUITIES OF CURRENT EXEMPTION

Because the amounts of price controlled oil received by different small refiners vary a great deal, the benefit of the exemption varies from .2 to 21.4 cents per gallon. Such a range cannot be justified on the basis of refining economics.

Sellers of entitlements, many of whom are also small refiners, must compete in the same markets and receive no comparable benefits, which results in large competitive advantages for some small refiners compared to others.

The present exemption places distributors and retailers who are supplied by non-exempt small refiners or by large refiners at a severe competitive disadvantage.

Current exemption distorts the exception process

No one regulatory program can deal equitably with the many different kinds of refinery operations in the U.S. As a result, the FEA exceptions process provides relief to those firms experiencing a severe hardship under the regulations.

In the Entitlements Program, exceptions are handled on a case-by-case basis to resolve hardships and inequities. This process grants full or partial relief from the purchase of entitlements when a showing of hardship or inequity is made.

Under the current Small Refiner Exemption, 56 firms have been fully or partially exempted. Of these 56 firms:

24 firms or 43 percent of the total had never requested exception relief from en-

titlements purchase requirements during the period April 1 through September 30, 1975;

6 firms had applied for exception relief which had been denied; and

26 firms had been granted full or partial exception relief prior to the time Special Rule No. 6 became effective.

The current Small Refiner Exemption clearly overlays inequities on a process designed to achieve equity.

V. FEA MODIFICATION OF CURRENT EXEMPTION

Increases the present small refiner bias for all small refiners under 100,000 barrels per day.

Revokes exemption benefits under Special Rule No. 6, which eliminates the inequitable competitive advantages of exempted small refiners.

The FEA Modification provides for an increase in the bias as shown on the following chart.

VI—ADVANTAGES OF FEA'S ACTION OVER CURRENT EXEMPTION

Comparison of total value of added benefits between current small refiner exemption and FEA modification

112 small refiners would benefit, rather than just 56.

This will assure competitiveness among small refiners.

It would provide additional advantages to small refiners vis-a-vis large refiners.

While the total value of current additional benefits would be reduced under the FEA modification, small refiners with runs of less than 30,000 B/D would receive three-quarters of the benefits. Under the current exemption, these firms receive only one-half of the benefits.

Additional benefits to a greater number of small refiners

FEA modification results in:

Fifty-six (56) more small refiners receiving additional benefits.

Thirty-one (55.4%) of these 56 refiners have crude oil runs of less than 10,000 barrels per day.

FEA modification distributes added value of benefits evenly among all small refiners in proportion to their size

Under FEA's Modification refiners with runs less than 10 MB/D receive lower average added benefits compared to the current exemption (2.1 compared to 6.9 cents/gallon). However, a larger number of these refiners (58 compared to 27) receive such benefits.

Refiners with runs 50 to 100 MB/D receive less added benefits under FEA's Modification than under current exemption (0.1 compared to 1.5 cents/gallon). However, a larger number of these refiners (12 compared to 5) receives such benefits.

Distribution of benefits

FEA Modification gives wider distribution of benefits to similar sized refiners. FEA modification avoids extremely large benefits to a few refiners.

TOTAL VALUE OF ADDED BENEFITS

| Refiner runs (millions of barrels per day) | EPCA exemption | | | FEA modification | | |
|--|-----------------|-------------|------------------------|------------------|-------------|------------------------|
| | Number of firms | Value | Percent of total value | Number of firms | Value | Percent of total value |
| 0 to 10 | 27 | \$7,432,357 | 18.9 | 58 | \$4,954,794 | 29.1 |
| 10 to 30 | 15 | 12,861,141 | 32.7 | 30 | 8,280,524 | 48.6 |
| 30 to 50 | 9 | 12,871,198 | 32.7 | 12 | 2,942,538 | 17.3 |
| 50 to 100 | 5 | 6,191,554 | 15.7 | 12 | 858,745 | 5.0 |
| Total | 56 | 39,355,250 | 100.0 | 112 | 17,036,598 | 100.0 |

| Refiner runs (barrels per day) | Added benefits under current EPCA exemption (in cents per gallon) | | | | | Refiner runs (thousand barrels per day) | Added benefits under FEA modification (in cents per gallon) | | | | |
|--------------------------------|--|---------|--------|--------|-------------|---|--|---------|--------|--------|-------------|
| | Over 10 | 5 to 10 | 2 to 5 | 0 to 2 | No benefits | | Over 10 | 5 to 10 | 2 to 5 | 0 to 2 | No benefits |
| 0 to 10..... | 7 | 4 | 9 | 7 | 31 | 58 | 0 | 0 | 57 | 0 | 11 |
| 10 to 30..... | 1 | 3 | 5 | 6 | 15 | 30 | 0 | 0 | 0 | 30 | 0 |
| 30 to 50..... | 0 | 2 | 3 | 4 | 3 | 12 | 0 | 0 | 0 | 12 | 0 |
| 50 to 100..... | 0 | 0 | 1 | 4 | 7 | 12 | 0 | 0 | 0 | 12 | 0 |
| Total refiners..... | 8 | 9 | 18 | 21 | 56 | 112 | 0 | 0 | 57 | 54 | 1 |

* 1 refiner had no runs in February, but received exemption benefits.

Impact of FEA modification on inequities among small refiners

The FEA Modification Corrects Inequities in the Range of Benefits Provided to Small Refiners Under the Exemption.

RANGE OF BENEFITS PROVIDED

(Cents per gallon)

| Refiner runs (millions of barrels per day) | Current exemption | FEA modification |
|---|-------------------|------------------|
| 0 to 10..... | 0-21.4 | 2.0 |
| 10 to 30..... | 0-12.7 | 0.9-1.9 |
| 30 to 50..... | 0-7.0 | .2-.9 |
| 50 to 100..... | 0-3.1 | 0-.2 |

Total benefits to small refiners under current and modified bias

The total value per month of the current small refiner bias and the added benefits of the Small Refiner Exemption and FEA's Modification are compared below:

COMPARISON OF TOTAL BENEFITS (INCLUDING CURRENT BIAS) TO SMALL REFINERS, TOTAL VALUE OF BENEFITS

| Refiner runs (millions of barrels per day) | EPCA exemption | | | FEA modification | | |
|--|-----------------|--------------|------------------------|------------------|--------------|------------------------|
| | Number of firms | Value | Percent of total value | Number of firms | Value | Percent of total value |
| 0 to 10..... | 58 | \$12,544,505 | 20.0 | 58 | \$10,054,739 | 25.0 |
| 10 to 30..... | 30 | 22,581,269 | 36.1 | 30 | 18,000,652 | 44.7 |
| 30 to 50..... | 12 | 17,357,599 | 27.7 | 12 | 7,428,939 | 18.4 |
| 50 to 100..... | 12 | 10,145,391 | 16.2 | 12 | 4,812,585 | 11.9 |
| Total..... | 112 | 62,628,764 | 100.0 | 112 | 40,306,915 | 100.0 |

VII. CONCLUSIONS

FEA's Modification of current small refiner bias and revocation of current small refiner exemption results in:

Elimination of competitive disparities among small refiners created by current exemption.

Receipt of benefits by 112 small refiners not just 56.

Equitable distribution of added benefits among all small refiners, scaled in proportion to their size to correct for diseconomies of scale in refining.

Restoration of fair competition among independent marketers supplied by small refiners.

Mr. JOHNSTON. Mr. President, I yield to the distinguished Senator from Wyoming.

Mr. McGEE. Mr. President, I thank the distinguished manager of the bill for permitting me these 2 or 3 minutes. I only wanted to underscore what he has just said, namely, that the real shortcoming that requires discharging this measure from the committee was the FEA's failure to live up to the law. The law says that FEA can modify. Under the pending action it simply is wiping out; it is revoking, and the whole spirit of the law, as intended by Congress, is being ignored. It is being flouted almost as though they wanted to defy deliberately the intent of this body.

We all know that under the existing program there are inequities among the small independent refiners themselves. Some of the independents gain by this, some of the independents lose by it, but the proposal by the FEA does not address itself to those inequities. If anything, it makes them worse.

We are confident that, if we can get this discharged and then move ahead under the resolution that is being submitted, we will have an opportunity, for

the first time, to protect the little refiners and the middle-sized independents. In my State, if I may underscore it, it makes a great deal of difference. In the State of Wyoming, the activities of the small refiners underpin all of the activity in the economy of our State. It is within this category that we believe the equities could best be balanced, rather than to take the meat-axe approach that the FEA has undertaken.

I think it is well that we remember in the FEA proposal there will also be a transfer of a quarter of a billion dollars annually to the majors. We are all interested in the majors as well, but if we are talking about equity—and that is what they try to talk about—they are leaving completely out of the picture the real problem of the gap between the small refiners that lose and the small refiners that gain. And, Mr. President, we find them playing the one group against the other. It is interesting to me to note also where a lot of the lobbying has come from in this matter. They are not interested in equity; they are interested in putting the heat on the little gas station operators, telling them that their costs are going to jump and they are going to lose business. Mr. President, that just plain is not true. But it is the type of whispering campaign that panics letter writing and I do not know when before I have seen the volume of letter writing that has come into this Chamber in a long time. We have called some of those people and they told us the case was represented to them in that context. And the case that was represented to them, Mr. President, is not even a relevant factor in the pending action.

What I am saying, Mr. President, is that it is time that we address ourselves to all of the inequities in this problem,

and we can do that best by discharging the committee and moving ahead to the resolution.

The FEA is not only wrong on this, it is misrepresenting the facts of the case on this. They have decided to get their backs up on it because they have to win something up here to undo the mistakes they have been making day after day.

Mr. President, it is important. It is important to me. It is important to my State of Wyoming. And it is most of all important to the basic equities in the program itself.

Mr. McGEE. Mr. President, I support the effort to discharge the Committee on Interior and Insular Affairs from further consideration of Senate Resolution 449 and urge the Senate to adopt this resolution which would disapprove the action of the Federal Energy Administration revoking special rule 6—the so-called small refiner exemption under the entitlements program.

I sponsored an identical resolution, Senate Resolution 450. I feel very strongly about this matter because it appears to me that FEA has failed to comply with section 403(a) of the Energy Policy and Conservation Act of 1975.

The practical effect of energy action No. 2 is to revoke the small refiner exemption. On the other hand, the record is clear that it was the intent of Congress that FEA should have authority only to modify the exemption program.

Second, hearings which were held last Monday by the committee demonstrate that the decision to invoke energy action No. 2 was based upon mere speculation. In any event, FEA has failed to provide Congress with hard data which would justify this action. It is my belief that the data, in fact, is lacking because the small refiners' exemption, as we all know

has not been in operation long enough to accumulate the factual information necessary and to form an objective opinion as to its equity and effectiveness.

A third point which I wish to briefly make also strikes at the heart of this issue. The small refiners and others who are most directly affected by Energy Action No. 2 received no notice until May 18 when it was published in the Federal Register. FEA sent its official notice to Congress 6 days earlier on May 12. In my judgment, fairness demands that those companies who have interests which are so directly affected should have more time than 6 days to prepare their case for congressional hearings.

Now the Senate is called upon to make a decision on this incomplete record. It is impossible for us to act prudently in this matter under the circumstances. Therefore, I urge that Senate Resolution 499 be adopted and that we give FEA a message that a new proposal be sent to Congress at a later date based upon objective and substantive data.

It is important that more time be given to measure the results of the existing program before a new and possibly conflicting program is imposed. For example, FEA's proposal increased the bias for the small refiners but failed to resolve the problem of a small refiner with more than one refinery. Mr. Zarb is to be commended for recognizing that the smaller refiners have disproportionately higher operating costs than large refiners. In referring to this matter, he said:

Issuance of these entitlements is designed to compensate for diseconomies of scale among small refiners.

Under the FEA rules, qualifying small refiners with more than one refinery are compelled to total the capacities of their small refineries, which places them on the bias curve as if they operated one large refinery. This is a gross inequity, and FEA should be urged to consider solving this problem by applying the bias on a refinery-by-refinery basis for qualifying small refiners. Such a provision for both buyers and sellers of entitlements would help solve the problem of small refiners everywhere, including those in the State of Wyoming.

We recognize, Mr. President, there are other inequities that need resolution and balancing, and we respectfully commend the FEA for the work they do under difficult circumstances. Certainly we are convinced that between the availability of the bias and the exemption, small refiners can receive the equitable consideration Congress intended.

I thank our colleague for having yielded the time.

Mr. METCALF. Mr. President, will the Senator from Louisiana yield?

Mr. JOHNSTON. I yield.

Mr. METCALF. Mr. President, I ask that we be supplied with Senate Resolution 450, which is the resolution of my distinguished colleague from Montana, and it be distributed on the desks. It is the same resolution that I have, but it is Senator MANSFIELD's resolution. May we ask the pages to distribute Senate Resolution 450?

The PRESIDING OFFICER (Mr. Ford). The Chair is delighted to ask the

pages to distribute the resolution as requested by the Senator from Montana.

Mr. METCALF. I thank the Chair very much.

The PRESIDING OFFICER. Who yields time?

Mr. BARTLETT. Mr. President, in a moment I will yield to the distinguished Senator from Hawaii. First, I ask unanimous consent that the following staff members have the privilege of the floor during the consideration of and votes on Senate Resolution 449: Faye Widemann, Carol Sacchi, Melissa Nielson, David Stang, Fred Craft, Ted Orf, Mike Hathaway, Tom Biery, Tom Imeson, Nolan McKean, Margaret Lane, and Pam Turner.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARTLETT. I yield to the Senator from Hawaii.

Mr. INOUE. Mr. President, I am compelled to vote in opposition to the resolution of disapproval and I will support the Federal Energy Administration's amendment to eliminate special rule No. 6.

The gross inequities and unfairness of special rule No. 6 distorts the prices of crude oil and gasoline throughout our Nation and makes a majority of our Nation's small and independent refiners uncompetitive.

In my State of Hawaii, our gasoline ranges around 80 cents a gallon, so we feel these pressures. Our one small independent refiner, due to our geographic location, operates on the most expensive foreign crude oil and receives no benefit from this special exemption. Nevertheless, by virtue of special rule No. 6, its entitlements are reduced and, as a result, it must contribute to this subsidy. During the month of March, this subsidy exceeded \$33½ million to 12 companies far from Hawaii. It is unconscionable that the people of Hawaii or any other State, should subsidize the excessive profits of a few companies. Certainly this is not consistent with the expressed intents.

The purpose of the Federal Energy Administration's crude oil equalization program is to equalize crude costs to small refiners. However, this exemption creates disparities between small independent refiners and pits them against each other. This is diametrically opposed to section (4) (b) (1) of the Energy Petroleum Allocation Act of 1973 by virtue of its inequitable distribution of costs among sectors of petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users. Without a doubt, it is also acted to interfere with market mechanisms in violation of section 4(b) (1) (I) of the EPAA.

I feel we have ample data and information upon which to act. Since the FEA published its notice of proposed rule-making in the Federal Register on February 28, 1976—almost 2 months ago—we have been aware of the vast disparities in the cost of crude oil after consideration of the entitlements benefits. In one refining district, there was reported a \$7.47 difference between the highest and lowest postentitlement crude

costs in December, and in another, a \$7.32 cost differential. It has also been reported that the subsidy to one of the few refiners who received the benefit, amounted to 21.4 cents per gallon and that seven refiners had benefits exceeding 10 cents per gallon.

I do not feel we should continue this program for another 6 months or until some small refiner goes out of business to determine whether we have adequate statistics. Section 551 of the Energy Policy and Conservation Act was designed to permit Congress to act with dispatch and thereby avoid catastrophes and flagrant inequities. Therefore, as we have the information and tools at hand, we should act to prevent further abuses which permit excessive profits for some at the expense of others.

Let me emphasize again that the FEA proposal simply reallocates what is at present excessive subsidies to a few small refiners to all small refiners.

As special rule No. 6 has acted to the detriment of the majority of the small and independent refiners—those it was intended to assist, it should not be permitted to stand.

The PRESIDING OFFICER. Who yields time?

Mr. BARTLETT. Mr. President, the matter before the Senate is not a matter of difference of opinion between the major refiners and the small refiners. It is a difference of opinion between small refiners and small refiners. It is between those who are exempted from buying entitlements, on the one side, among the small refiners and those who sell entitlements, on the other side, and their respective dealers, plus the dealers of the major companies.

So what we have here is the result of the vagaries of rationing, of the inequities that obviously go with a three-tier pricing system. It should be recognized that the only solution to this problem is to deregulate the price of oil. The FEA has made an effort here—and I think a sincere one—to improve the inequities; but there still would be inequities under their system. However, there would be less of an inequitable situation than exists today.

Also, those who have already filed or those who in the future would file complaints could receive special consideration. It seems to me that this is the only way in which we can avoid having these tremendous advantages to some small refiners over other small refiners and their respective dealers that we have today.

The present exemption benefits only one subclass of small refiners, those who normally would buy entitlements, and harms the small refiners who sell entitlements, their dealers and distributors, and the marketers of major companies.

The exemption, therefore, is not uniformly or universally applicable to small refiners as a whole. The exemption gives some small refiners, those with a large percentage of old oil in the refinery's feedstock, a tremendous cost advantage over their competitors. The greater the amount of old oil, the greater the advantage.

If the FEA amendment is disapproved, the exemption will continue, and the vast

inequities caused by it will continue until the FEA makes another proposal. Thus, disapproval of the FEA proposal would continue a bad situation, which nearly everyone admits is unfair to many and is a windfall to some.

No doubt, there are some refiners who have the exemption and who would continue to need relief if the FEA proposal were adopted. In this manner, the FEA did ask in advance for appeals to them for relief, and this has been grandfathered in.

I am convinced that the ultimate solution to the energy problems is decontrol of all oil prices, as I mentioned. If this were done, we would not need the entitlements program. As long as the three tiers exist and the Government has to equalize refinery feed stocks, there will continue to be problems for some companies; because what we are doing is requiring a few people in the FEA to play God and to make decisions that cannot fairly and equitably reflect the wishes of the consumers and the sellers in the free market because the market is controlled. So the prices are creating the inequitable situations that are causing so much concern. This is inevitable in a regulatory situation.

However, I am equally convinced that the FEA proposal is more fair to most of those companies and the individuals involved than the continuation of the present situation. It appears that those who have exemptions now want it to continue, but in many cases the exemption is not needed for financial survival or even for a reasonable profit. It is simply financially lucrative. I do not blame these companies for their position. However, this is a clear case of a special interest situation in which the Government is giving one group of small refiners and their retailers a distinct advantage in the marketplace and in obtaining market shares over other small refiners. We should take advantage of this opportunity to correct this special subsidy and institute a more universally applicable program.

Mr. BELLMON. Mr. President, will the Senator yield for a question?

Mr. BARTLETT. I yield.

Mr. BELLMON. My colleague from Oklahoma probably knows more about the oil business than any other Member of the Senate, and I value his opinion.

I am not fully familiar with how the exemption program works or even how the allocation program works. My information is that if this action by the FEA is allowed to stand, it is going to create some rather major dislocations in the refining industry.

I wonder whether the Senator can advise me whether there is a sort of middle ground, whether if Senate Resolution 449 is agreed to, the FEA could then come back with a more moderate approach to this problem, rather than the effort they are making now to eliminate the small refiner exemption.

Mr. BARTLETT. Yes, they could do that.

The position I would favor is that the FEA decision stand, and then Congress and the Committee on Interior and Insular Affairs and those interested could try to work with the FEA to improve it.

I think that the inequities that exist under the new system are less than those that exist under the present system. That is the reason why I would favor that the FEA decision stand, rather than reverting to the present situation, which has great disparities and great unfairness.

Mr. JOHNSTON. Mr. President, will the Senator yield for a question on that point?

Mr. BARTLETT. I will yield, on the Senator's time.

Mr. JOHNSTON. I have only one minute.

Mr. BELLMON. I agree with Senator Bartlett that the solution to the problem is to wipe out the oil price control problem. Apparently, we are stuck with it, and I am trying to devise a course of action that produces the smallest amount of inequities.

It is the opinion of Senator BARTLETT that upholding the FEA position will produce fewer inequities than if Senate Resolution 449 is approved.

Mr. BARTLETT. Yes, this is my definite position.

I was pleased to learn, and I advise my colleague, that of our six small refiners in Oklahoma, five of them either are benefitted by the action of the FEA or favor it. In one particular case, one of the refiners would actually lose some of his subsidy, but nonetheless, he favors the FEA position.

I think one of their real concerns in the matter is that the subsidies to certain small refiners are so great and such a windfall that if this persists longer, it is going to root this whole business of exemption of entitlements in concrete, where it will be very difficult in the future to reduce the subsidies and to come up with a fairer program by the FEA.

I think that in the reduction of the subsidies that takes place in the FEA action, there is improvement and a fairer treatment of the problem. Nonetheless, the problems will continue and there will need to be, as there are provisions for, special treatment of special situations, because there will be certain small refiners who will be very severely hurt by the continuation of the entitlements program without the exemption.

Mr. JOHNSTON. Will the Senator yield for a question at that point?

Mr. BARTLETT. Yes.

Mr. JOHNSTON. Is the Senator aware that really, there is not a great deal of difference between the position that he has set forth and the position we are advocating? That is, we are not trying to preserve the present exemption in the present form. Rather, we want a modified exemption which will contain some exemptions for small refiners. Is the Senator aware of that?

Mr. BARTLETT. Yes, I am aware of that; but I feel very strongly that the FEA is taking a proper step and creating a better situation for, say, this interim period where we might want to make further improvements.

Let me say also to the Senator—I know that he favors very strongly and I commend very strongly his support of a de-regulation of the price of oil. I know he has fought for that. I know we both agree

that we would not be here now discussing this matter if we had decontrol.

Nonetheless, with the decontrol situation and the vagaries that accompany that, I think it is impossible for anyone to come up with any kind of plan that can work for everybody and not be a windfall for some and create severe inequities for others.

I do think that this new program is better than the present one. I think it can undoubtedly be improved, but I do believe that any plan we have is going to have to rely rather heavily on special consideration of very adverse conditions in a particular instance of a small refiner.

Mr. JOHNSTON. Is the Senator aware that when FEA filed its notice of proposed rulemaking on February 28, their proposed rule would have exempted refiners of 10,000 barrels a day and less of refinery production? In other words, when FEA first filed the rulemaking notice, FEA contained a provision which, in substance I think, all of us—at least a majority on the Committee on the Interior—would support. The Senator is aware of that, is he not?

Mr. BARTLETT. I was not aware of that, but I think that that is something that could be worked upon in the future. I shall want to check into it a little further before taking a position on it.

Mr. JOHNSTON. One more small question. The Senator is aware that this Senator and other Senators on what we might call the majority in the Committee on Interior have stated not only our willingness but our strong desire to work with FEA to come up with some modified rule which is somewhere between the present law and the total revocation as advocated by the FEA. The Senator is aware of that?

Mr. BARTLETT. I am aware of that, and I certainly can vouch for the efforts of the Senator from Louisiana to improve the situation, but I do feel that that could take considerable time. We have various activities this summer that are going to interfere with the regular routine. I think that right now, since the Senator has brought it before us, we should make the decision which would create the fairer situation to exist during the interim while there would be further consideration, and talk with the FEA for, perhaps, an improvement.

I am happy to yield to the distinguished Senator from Tennessee.

Mr. BROCK. The Senator was indirectly making my point. That is, if we reject this discharge petition and allow the modification of the rules to go into effect, there is nothing to preclude the committee or an individual Member of Congress or the FEA, separately or jointly, from working on further improvements and modifications. What the Senator is asking us to do is nothing, to keep what it is, in effect, an unfair situation on the books, because he does not think this is quite fair enough, as an alternative. That is an unacceptable proposal to me.

The new rules may not be perfect; I personally agree that they are a long way from it. But I do not want the FEA

controlling in this area, period. That is a fundamental, philosophical objection.

At least they are moving in the right direction and there is some improvement over the current circumstance. To argue against any change at all is to argue for continuation of massive inequity, market dislocation, adverse consumer effect, and a loss of energy independence on the part of this Nation and its people. I cannot accept that as an alternative.

Mr. BARTLETT. I concur wholeheartedly with the Senator from Tennessee and I think he is bringing out the inequities that do result from price controls, the lack of competition, the favor that is enjoyed by one group of small refiners and the disadvantage to another group and their respective dealers.

I cite to the distinguished Senator from Tennessee the specifics in this: In the first month of the exemption, the spread in crude costs of small refiners after entitlements in one Bureau of Mines Refining District was \$7.47 per barrel, or 17.8 cents per gallon. Just think what you could do as a refiner or as a refiner's distributor if you had that much of an advantage over your competition. Obviously, you are going to carve out a much larger share of the market for yourself.

This points out the gross crude oil and gasoline disparities among small refiners created by the exemption.

In a more recent month, in February, the wide divergence in crude oil costs after entitlements between exempt and nonexempt small refiners persists. In southern California, crude cost disparities between small refiners marketing residual fuel oil was more than \$7 a barrel.

I might say here that some of the small refiners in California pay \$2 or \$3 a barrel under the ceiling price for new crude oil because of the great windfall that they have and the advantage they have operating at reduced capacity, but at a more profitable level because of the old oil prices.

One company in Texas, with a capacity of 50,000 barrels per day, has received exemption benefits greater than 5 cents per gallon each month, had a request for exemption relief denied, is making an admitted after-tax return of 12 percent, and received benefits of over \$18 million in the first 5 months under the exemption. This is the largest beneficiary of relief that has been provided by the FEA.

This company's crude costs are running approximately \$4 below the average crude cost of all small refiners after entitlements. Clearly, the exemption relief is unnecessary in this case. In the month of February, the total dollar value of exemption benefits was \$39.4 million. This company alone received \$2.9 million in exemption benefits.

In toto, refiners with capacities greater than 30,000 barrels per day received \$19.1 million, almost half of the total exemption benefits.

From these figures, it can be seen that other small refiners, as well as marketers and jobbers not purchasing from exempted refiners, are at a significant competitive disadvantage.

Mr. BROCK. The Senator makes the point accurately. I simply add that some are reaping unacceptable and unfair advantage over others that have no opportunity for equivalence at all. That, in itself, disadvantages the American consumer.

Second, we have, under the current system, a situation in which, literally, our own rules create an incentive to locate refineries outside the United States rather than inside, making us more dependent upon foreign production, foreign processing, and foreign refining. I find that an act of at least partial national suicide. I think it is ridiculous and totally unacceptable. To say that we should continue that process is surprising to me. I cannot understand the logic of those who suggest that we should continue a situation which hurts the American consumer, hurts the American working person, and makes us more dependent upon not only foreign production, but foreign refining as well.

Mr. BARTLETT. I agree wholeheartedly with the Senator from Tennessee. I think the action of supporting the FEA in this regard reduces the subsidy. It makes it more likely that the United States can face up sooner to the problems that it has to provide sufficient energy domestically.

Mr. BROCK. May I just interject that I think the greatest frustration I have at the moment is the fact that Congress after—what has it been?—about 4 years now has yet to establish an energy policy, and here we go again saying let us not act to improve anything, let us not act to change anything, let us just continue the status quo. We are now up to where a month ago over half of our domestic oil was imported instead of produced domestically. If that does not scare anybody else, it scares the wits out of me because I do not think that is an acceptable fact to the American people. I know we can do better, but I have never seen an issue on which more politics and less commonsense were used than in the whole field of energy.

It has not been an honest debate. It has not been a debate which presents the facts to the American people. For the life of me I do not understand why the American people do not appear here with pitchforks saying, "Hey, we expect a little better out of you. We want you to show commonsense and decency. We expect a change, and you should not play politics with a matter like this."

Mr. BARTLETT. I agree with the Senator from Tennessee that there has been a lot of hyperbole and demagoguery, and we have a lot of critical positions because this country is in the worst shape it has been so far as energy is concerned. It is more vulnerable so far as our national security and our economy. The drop last year in crude oil production was some 500,000 barrels; the year before another 500,000. There is no leveling off taking place. We are subsidizing today the OPEC production and giving them more leverage to control the price.

We are willing to pay their high price because we have to, but we do not want to pay our own producers the same price,

so we continue to increase the disparity between their ability to produce and ours.

If you go back just to the fifties and sixties, we had a period there where we subsidized our domestic production, even though we had an excess, because we recognized how important it was to have that excess, and we subsidized our production and we had some 2,300 rigs running. At that time we were only importing 12.5 percent of our oil requirements. We have increased that, as the Senator said, from one period of time over 50 percent, but is averaging, I think, 42 percent.

Our position is really desperate. If we have a series of things that could happen, if there was a NATO confrontation, our ability to supervise and control properly the trade routes around Africa for the oil going to NATO and to this country and back and forth between our country and Europe would be most difficult. The loss of imported crude would be tremendous in both areas. Our reliance on crude is so vital for our national security and for our economy, so we have got ourselves in a real hole.

Here we are subsidizing our foreign competitors and giving them more control over our destiny at a time when we should really be cutting back in our use of energy by letting the price go to what would be a fair price, considering our supply-demand situation.

If we do not do this soon, then certainly there is either going to be an embargo or there is going to be a break in one of the main pipelines in the Arab countries, or there are going to be a few bombs thrown over there or a NATO flareup or something else in the world that is going to show very clearly how vulnerable we are.

To me our Achilles heel in the economic and military situation is a shortage of energy, coupled with the weakness of our airlift and seafight capability. Tie all of these together and we are very, very vulnerable.

Mr. BROCK. There is no question about the vulnerability.

I would say that I did not favor subsidies then and I do not favor them now. I do believe that the marketplace is adequate to meet the needs, and if we will let it work instead of meddling on the part of the Federal Government, we can supply the energy needs of this country. We do not need subsidies and we do not need all kinds of false devices to allocate supplies.

The American people have enough judgment to do that, but we sure do need a policy which recognizes that this Nation can be in very great danger, and we must address that not just in our interest, but our children's interest as well.

Mr. BARTLETT. I thank the distinguished Senator from Tennessee, and I concur with his thinking.

Mr. President, may I ask how much time is left?

The PRESIDING OFFICER. The Senator from Oklahoma has approximately 3 minutes.

Mr. BARTLETT. Would the Senator

from Louisiana like to take some of that time?

The PRESIDING OFFICER. The Senator from Louisiana has 1 minute.

Mr. JOHNSTON. Yes, I thank the Senator.

Mr. BARTLETT. I will be glad to give the Senator 1 of the minutes I have so that he has 2.

The PRESIDING OFFICER. The Senator from Louisiana has 2 minutes.

Mr. JOHNSTON. I thank the distinguished Senator from Oklahoma.

I would like to make three very simple points. We ought to throw out this FEA action for three reasons. First, the FEA action is, in my judgment and in the judgment of many distinguished lawyers—I should put that, I guess, in reverse order—but in any event, in their opinion it is illegal and unfair and probably subject to court attack, which would be the best way to perpetuate the present rule. That is to freeze it in my judgment of court and by extensive litigation.

Second, the FEA has not been responsive to Congress. The FEA filed this rule-making proposal on February 28. They sent their notice to Congress as to their final proposed rulemaking on May 12 and did not even bring their rule to the Interior Committee for discussion with the Senators there who have the responsibility of enacting legislation with respect to this rule.

The Interior Committee has been, is, and will be willing at all times to discuss with FEA the confederation of a reasonable small refiners exemption, but we have to have a two-way conversation. We cannot speak to ourselves.

The third point is that small refiners need some exemptions. This is a revocation which leaves exemption for small refiners.

The PRESIDING OFFICER. The time of the Senator from Louisiana has expired.

The Senator from Oklahoma has 2 minutes.

Mr. BARTLETT. Mr. President, the question before us is whether we accept the FEA action to improve the inequities that fall out of the exemption of the entitlements for some refiners.

The disparities exist between small refiners and their respective dealers and affect other dealers. But the effort of the FEA is to improve the inequitable situation that exists because of price controls in the entitlements, a three-tier system which is impossible to administer with any kind of fairness. But I do believe that even though the new program will have inequities there will be less inequities, and it will be more fair. There will also be the opportunity for those who have complaints about it to discuss those in committee or with the FEA for further improvements.

But I would like to warn them because of the three-tier system, that is a monster created by Congress, there is no opportunity at all to have a system of price controls that can be fair and equitable to everyone; or that we can have rules passed either in Congress or by the FEA that will provide equity and fairness.

There is a provision in the rule that

will permit special consideration, and that will have to be used to the utmost.

Mr. TAFT. Mr. President, after careful study, I have decided to support energy action the proposal of the FEA to eliminate the exemption from the purchase of entitlements of small refiners.

The exemption, which applies to small refiners of less than 100,000 barrels per day, was intended to help all small refiners to compete with the major oil companies. It has clearly failed in its purpose.

The exemption does assist those small refiners who are rich in low cost domestic crude oil, and who would normally have to buy entitlements to help compensate companies which are domestic crude poor. However, by reducing the market for entitlements, the exemption adversely affects those small refiners which sell entitlements. This costs them nearly \$39 million annually. Furthermore, and more seriously, the exemption over-compensates the small crude rich refiners—it gives them such a large benefit per gallon that they can easily undersell their principal competitors, small crude poor refiners. Nineteen crude rich refiners receive the bulk of the benefit from this exemption. Thirty-seven are helped somewhat. The remaining 63 small refiners are hurt severely.

The FEA proposal would eliminate the cause of this severe distortion in the small refiner sector of the oil industry, and it is clearly a step toward an equitable entitlements program. Furthermore, to prevent a large transfer of funds from small refiners as a class to the majors, the FEA will increase the "small refiner bias," which is a program of granting free entitlements to all small refiners, and which will benefit all members of the group. For these reasons, I oppose Senate Resolution 449, which would block the FEA's proposed energy action No. 2.

Mr. HANSEN. Mr. President, it is a rather sad note that we are here on the Senate floor debating whether or not Senate Resolution 449 should be adopted. I say sad because if there were no Government controls on the American energy industry, regulations proposed by the Federal Energy Administration would not be submitted to the Congress for a veto by either House. That is precisely why I voted against the conference report on the Energy Policy and Conservation Act. But the act, nevertheless, passed by a vote of 58 to 40 and later became law. This complicated administrative morass has resulted directly from the enactment into law of the Energy Policy and Conservation Act. It will be recalled that that act imposed a price rollback on crude production this country. That act authorized the administration to submit to the Congress certain regulatory proposals pertaining to various subject matter related to petroleum price and allocation controls. It will be recalled that a few weeks ago, energy action No. 1 was submitted to the Congress. It pertained to decontrol of residual oil. Neither House vetoed that regulatory proposal. As a consequence, that proposal has now become a Federal regulation.

On May 12, the Federal Energy Ad-

ministration submitted its energy action No. 2 to the Congress. It was in the form of a proposal to revoke the small refiners exemption embodied in the Energy Policy and Conservation Act, which was implemented in Federal regulations, commonly referred to as special rule 6.

Having served on the conference committee, I recall clearly that most members of the conference committee had significant reservations about the specific nature of the small refiners exemption contained in that act. They were fearful, as was I, that it would breed certain inequities. For example, the exemption applied only to small refiners who were buyers of entitlements. The provision neglected to deal with the problem of small refiners who were sellers of entitlements. This was one reason why the act specifically provided that if the small refiners exemption resulted in inequities, the Federal Energy Administration would be authorized to propose a modification of that exemption by submitting to the Congress a proposal which, if not disapproved by either House, would then become effective and have the full force of law.

In a letter that the Senator from Louisiana and I sent to our colleagues on May 26, we pointed out that the small refiners exemption needs modification.

Let me address some of the equities involved in that matter before we get into the more troublesome procedural aspects. The exemption for small refiners provided by the Energy Policy and Conservation Act and subsequently implemented by a Federal regulation, commonly known as special rule 6, pertained to exemption or partial exemption from obligatory Federal participation in the entitlements program. To oversimplify, the entitlements program was intended to insure that each refiner in the United States would end up paying the same aggregate price for each barrel of crude oil he ran through his refinery. This to provide equitable compensation for the fact that there was a two-tier pricing system for oil. At that time, the price control system contained two categories of oil. The first was old oil, which was price controlled and the second was oil which was not price controlled, consisting of new oil, released oil, stripper oil, and imported oil.

This two-tier pricing system has remained in effect, although modified by the Energy Policy and Conservation Act. The rationale behind the small refiners exemption was predicated upon the theory that small refiners should not have to pay as much for crude oil as should larger refiners because the small refiners could not operate on such economies of scale as could the larger integrated refiners. Mr. John Hill, the Acting Administrator of the Federal Energy Administration, in a letter dated May 26, addressed to the chairman of the Senate Interior Committee, pointed out that the small refiners exemption presents basic problems. He stated:

First, it confers substantial monetary benefits upon certain very profitable small refiners without regard to their need to receive such benefits. At the same time, it

denies benefits to other small refiners without any consideration for their very real need for benefits.

He also mentioned that—

The distribution of benefits without regard to need results in competitive disadvantages between small refiners receiving benefits and those not receiving benefits. It further results in market distortions by causing competitive inequities between independent marketers purchasing from small refiners benefiting from the exemption and independent marketers purchasing from other refiners not benefiting from the exemption.

His latter statement raises the issue that in the minds of many independent branded dealers, special rule 6 has resulted in their losing substantial parts of the market share they heretofore enjoyed and that such loss of market share was a direct result of the ability of certain small refiners to sell product to independent dealers handling their product at a lower price than was available to branded dealers.

Returning to the first point, the small refiners who are sellers to entitlements are presently disadvantaged by special rule 6 when one looks at the prices they are required to pay for crude oil when compared to that of the exempted small refiners.

Mr. President, I have mentioned these inequities because our opposition today to energy action No. 2, proposed by the Federal Energy Administration, is not based entirely upon the merits of the issue but rather upon the procedures.

The Senator from Louisiana and I, in our letter addressed to our colleagues dated May 26, mentioned these procedural difficulties at some length. There are few of us who properly understand who will be helped by energy action No. 2 and who will be harmed. The supporting documentation received from the Federal Energy Administration has not been wholly satisfactory.

Second, as was mentioned in our letter, there is a legal question involved regarding the legality of revoking as opposed to modifying the small refiners exemption. Third, there is the fairness issue of the fact that the Federal Energy Administration submitted its energy action No. 2 to the Congress on May 12, but did not publish that same proposal in the Federal Register until May 18. Accordingly, many who are potentially affected by the Federal Energy Administration proposal before us now have not had adequate opportunity to analyze it and in turn, indicate to us their feelings about it.

Mr. President, to sum it up, we are hopeful that the administration will promptly redraft and resubmit to us a similar small refiners proposal and that such submission will be accompanied by appropriate data pertaining to the question of who is helped and who is harmed by such a proposal.

It would also be my hope that promptly after such submission the Interior Committee would conduct hearings on such a proposal so that all those persons affected by it could make their views known to the committee. The ability to evaluate the equities of such a proposal would be substantially enhanced under

such an arrangement. Let me close by restating my regret that we are forced to vote on this issue at all. If there were no controls, a free market would exist and a free market is by far a preferable arrangement to the Federal Energy Administration or any other Government agency, attempting to determine prices and allocate supplies between and among any and all refiners. For these reasons I would ask my colleagues to join me in voting to support Senate Resolution 449, which would disapprove the Federal Energy Administration's small refiners proposal pending before this body at this time.

Mr. BAYH. Mr. President, I am prepared to vote for the pending resolution disapproving the proposal by the Federal Energy Administration to do away with the small refiner exemption under the entitlements program. I do so, Mr. President, with mixed feelings.

Last year I favored creating an exemption from the entitlements program for truly small refiners who would otherwise have had to buy entitlements from some of the world's largest, integrated oil companies. It was my position that the exemption should have been limited to refiners with a capacity of 30,000 barrels a day or less. Unfortunately a broader exemption was enacted, providing benefits to middle-sized refiners who had not demonstrated a real need for the exemption.

However, if the FEA proposal is permitted to take effect the small refiner exemption will be eliminated entirely, adversely affecting even the smallest, independent refiner for whom an exemption is essential. Therefore I find it necessary to vote for the resolution of disapproval. However, should FEA use its authority to propose a modification in the small refiner exemption to limit its benefits to truly small refiners I would be prepared to support that action.

I regret that the choice now before us is either to do away with the exemption entirely or to permit it to operate in its present form. While I like neither of these choices, passage of the pending resolution leaves open the possibility of adjusting the small refiner exemption so that it can work equitably for those who need it. I hope the resolution will be adopted and FEA will take advantage of the opportunity to propose a more reasonable modification.

Mr. MONDALE. Mr. President, I rise in opposition to Senate Resolution 449, to disapprove energy action No. 2.

Energy action No. 2 would increase the small refiner bias, while revoking the current small refiner exemption in the Federal Energy Administration's oil entitlements program.

The proposed action by the FEA is intended to correct an extremely inequitable situation in the way small refiners are currently treated under the entitlements program. This inequity was not intended by the Congress at the time we included the exemption in the Energy Act last December.

Congress intended to assist all small refineries in their efforts to compete with the major oil companies. At this time, there are 119 small refineries operating in this country. The exemption effec-

tively transfers \$39 million per month to the exempted refiners; however, only 56 small refiners are eligible to receive benefits under the exemption as enacted. Of these 56, 19 receive 87 percent of the money; 63, or the majority of the small refiners, receive nothing. Surely, this is not consistent with the intent of Congress to assist all small refiners.

The inequity is compounded because 63 small refiners who receive no benefit from the exemption, are also asked to pay part of the cost for the subsidy. The FEA has published figures which show that the cost disparity between small refiners has reached more than 21 cents per gallon. Since these small refineries are often in direct competition, the disparity can lead to the destruction of one small refinery at the hands of another.

Additionally, the present exemption provides benefits in excess of 5 cents per gallon for six refiners who, because they have never applied for exceptions or appeals relief, can be presumed not to need any assistance at all. In some of these cases, a company which was experiencing a 20-percent rate of return before the exemption is receiving an 8 cents per gallon subsidy. In other words, a very profitable company is receiving up to a \$3 million a month subsidy that they indicated during the Interior Committee hearing they did not need, yet the cost of this subsidy must be paid by other small refiners who get no benefit.

This inequity in the distribution of exemptions benefits has major regional implications. The refiners who are presently exempt tend to be located in the historical oil producing States while those in consumer areas are not exempted. For example, refineries in the State of Minnesota, and many other States in the Midwest and East are overwhelmingly sellers rather than purchasers of entitlements. Since they are generally limited either to imported or new crude oil rather than lower-cost old crude oil. They receive no benefit from the small refiner exemption, they just pay the bill. Consumers living in the areas of the sellers of course ultimately must pay for the subsidy. Speaking for the consumers of my State, I see no reason why we should subsidize other consumers in oil rich States.

The FEA proposal will rectify this by removing the automatic exemption, and increasing the small refiner bias, thus distributing relief more equitably to all the small refiners who have less than 100,000 barrels per day capacity. Additionally, the FEA proposal will allocate the benefits according to size with benefits diminishing as the size of the refinery increases.

Questions have been raised concerning the legality of the FEA proposal since the language of the act allows the agency only to modify the exemption. In fact, FEA is revoking only the implementing regulation called special rule No. 6. FEA is not revoking the provisions of the act but merely modifying the regulations to bring the distribution of benefits more nearly in line with the requirement for equity and efficiency contained in the statement of purpose under section 4(b)(1) of the act.

Opponents of the FEA proposal claim that insufficient data has been developed to show that one small refiner who is paying \$5 to \$6 per barrel has a competitive advantage over a similarly sized small refiner who is paying \$11 per barrel. The competitive advantage is self-evident. The detailed market studies being demanded would require up to a year of analysis. By that time, the many nonexempt small refiners who are already experiencing severe difficulty could well be out of business. Action is needed now, not a year from now when injured small refiners may no longer be able to recover.

A final argument has been advanced that proper hearings were not held on energy action No. 2. In fact, hearings were held in January and March that provided ample opportunity for all interested parties to comment on modifications of special rule No. 6, including revocation. The Senate Interior Committee, in its own hearings on this issue, received testimony from several small refineries and oil jobbers in support of energy action No. 2.

In conclusion, I believe that there is no justification for disapproval of the FEA's proposal. Small refineries in general would be far better off under energy action No. 2 than under the existing inequitable program. Any small refiner who is truly disadvantaged would still have an opportunity to receive an exemption. However, that exemption would have to be justified on grounds other than the refiner's privileged position of having disproportionate access to lower-cost crude oil.

For all of these reasons, I oppose the pending resolution. I hope that my colleagues will join me in defeating this measure.

The PRESIDING OFFICER. The time of the Senator from Oklahoma has expired.

The question is on the motion to discharge the Committee on Interior and Insular Affairs from further consideration of Senate Resolution 449.

Mr. JOHNSTON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARTLETT. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question now is on agreeing to the motion to discharge the committee from further consideration of Senate Resolution 449. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURKIN (after having voted in the negative). On this vote I have a live pair with the distinguished Senator from California (Mr. TUNNEY). If he were present and voting, he would vote "yea." I voted in the negative. Therefore I withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Idaho (Mr. CHURCH), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Rhode Island (Mr. PASTORE), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) and the Senator from Montana (Mr. MANSFIELD) are absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE) and the Senator from New Hampshire (Mr. MCINTYRE) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

On this vote, the Senator from Arizona (Mr. GOLDWATER) is paired with the Senator from Hawaii (Mr. FONG). If present and voting, the Senator from Arizona would vote "yea" and the Senator from Hawaii would vote "nay."

The result was announced—yeas 28, nays 57, as follows:

[Rollcall Vote No. 201 Leg.]

YEAS—28

| | | |
|-----------------|-----------------|----------|
| Allen | Glenn | McClure |
| Bayh | Hansen | McGee |
| Bellmon | Hart, Philip A. | Metcalfe |
| Bentsen | Hartke | Moss |
| Byrd, Robert C. | Hatfield | Randolph |
| Cranston | Jackson | Sparkman |
| Domenici | Johnston | Stennis |
| Eastland | Long | Stone |
| Fannin | Magnuson | |
| Garn | McClellan | |

NAYS—57

| | | |
|---------------|------------|-------------|
| Baker | Griffin | Pell |
| Bartlett | Hart, Gary | Percy |
| Beall | Haskell | Proxmire |
| Biden | Hathaway | Ribicoff |
| Brock | Helms | Roth |
| Brooke | Hollings | Schweiker |
| Buckley | Hruska | Scott, Hugh |
| Bumpers | Humphrey | Scott, |
| Burdick | Inouye | William L. |
| Byrd, | Javits | Stafford |
| Harry F., Jr. | Kennedy | Stevenson |
| Cannon | Laxalt | Symington |
| Case | Leahy | Taft |
| Chiles | Mathias | Talmadge |
| Clark | McGovern | Thurmond |
| Culver | Mondale | Tower |
| Curtis | Morgan | Weicker |
| Dole | Muskie | Williams |
| Eagleton | Nelson | Young |
| Ford | Nunn | |

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Durkin, against.

NOT VOTING—14

| | | |
|-----------|------------|---------|
| Abourezk | Huddleston | Pastore |
| Church | Mansfield | Pearson |
| Fong | McIntyre | Stevens |
| Goldwater | Montoya | Tunney |
| Gravel | Packwood | |

So the motion to discharge the committee from further consideration of Senate Resolution 449 was rejected.

Mr. BARTLETT. Mr. President, I move to reconsider the vote by which the motion to discharge the committee was rejected.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE ANTI-TRUST IMPROVEMENTS ACT OF 1976

The Senate continued with the consideration of the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, before the FEA regulations matter came up for discussion, I yielded the floor—

Mr. ROBERT C. BYRD. Mr. President, may we have order so that the Senator from Alabama may be heard?

The PRESIDING OFFICER. The Senator from West Virginia makes a good point. The Chair has been working on that for the last half hour.

The Senate will please come to order. The Senator from Alabama may proceed.

Mr. ALLEN. I thank the Chair. At 12:20 this afternoon, I was speaking on this subject and the distinguished Senator from New Mexico (Mr. DOMENICI) asked that I yield the floor in order that he and the distinguished Senator from Oklahoma (Mr. BELLMON) might engage in colloquy for 10 minutes.

I ask that the resumption of my remarks at this time not be considered a second speech, but merely a continuation of my first speech for the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, earlier today I was discussing the parliamentary status of the bill before us. Whereas the bill before us is in the form or the basic frame, I might say, of H.R. 8532, actually what is before us is the Senate bill, S. 1284. Earlier today I was discussing the five titles of the Senate bill.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for a unanimous-consent request, with the understanding he not lose his right to the floor?

Mr. ALLEN. Yes.

ORDER FOR SENATE ACTION ON CERTAIN NOMINATIONS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at 12 o'clock noon tomorrow, the Senate go into executive session to consider the nominations of Mr. David Lilly to be a member of the Board of Governors of the Federal Reserve System and of Mr. George Kuper to be Executive Director of the National Center for Productivity and Quality of Working Life; that votes occur on those nominations, in that sequence, without debate or intervening motion; that the votes occur immediately one

succeeding the other; and that upon the disposition of the second nomination, the Senate return to legislative session.

The PRESIDING OFFICER (Mr. DURKIN). Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent that in the case of Mr. Lilly, there be a time limitation for debate thereon of not to exceed 20 minutes, controlled by the Senator from Wisconsin (Mr. PROXMIER) and the minority leader or his designee.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD, Mr. President, as in executive session, I ask unanimous consent that it may be in order to order, with one show of seconds, the yeas and nays on the two nominations which will be voted on tomorrow.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD, Mr. President, I ask for the yeas and nays on those two nominations.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

THE ANTITRUST IMPROVEMENTS ACT OF 1976

The Senate continued with the consideration of the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes.

Mr. ALLEN. So the frame of the bill that we are supposed to be considering is the House bill, H.R. 8532, which had only one subject. That bill, incidentally, did not go to any committee; it was, in effect, met at the door and placed on the calendar without any committee consideration of the particular bill.

The explanation given for that method of handling the bill was that the Senate committee had considered the Senate bill, which had as one of its five parts the provisions of the House bill. Therefore, to consider the House bill would have been only a duplication of effort.

There might be some logic or validity to that. But it would have been preferable, in the view of the Senator from Alabama, that the House bill go to committee and be considered on its merits, and that bill then sent out to the floor for consideration up or down on its merits.

What has happened, however, is that the Senate, instead of considering the Senate bill—which, by the way, is on the calendar and has been reported out by the committee—instead of letting the Senate either consider the House bill on its merits or consider the Senate bill on its merits, we have before us something of a hybrid proposal here, in that we are using the framework of the House bill, but seeking to add the five titles of the Senate bill, one of which titles is the House bill.

Now, Mr. President, the other body is considering these five titles separately, as the Senator from Alabama understands it. There is a consensus of opinion

in the House, and doubtless in Senate, that some of these titles are good. I would point out one that I feel is good; that is the title that requires prenotification of plans to merge corporations the effect of which merger might violate the antitrust provisions.

On others of these titles, there is not general agreement. I do not know that there is general agreement on the premerger notification, but speaking for myself, I would see no great objection to that. But the House, as I said, is considering each one of these titles in separate bills, so that they might accept some and might reject some. But the way the matter is presented to us here in the Senate, we have to, in effect, take all five titles, some of which we might approve and some of which we might not approve.

How is that accomplished? Well, they have taken this framework of the House bill—and obviously you cannot substitute the Senate bill for the House bill; what you do in effect does that by seeking to substitute the provisions of the Senate bill.

So as a result, what is happening is that the one subject from the House of Representatives is going to have added to it, if the proponents of this substitute have their way, or substituted for it, this Senate five-title bill, or its provisions.

What will happen? In testimony before the Rules Committee of the House of Representatives—I assume when they tried to get an order or a rule with respect to the bill—prominent Members of the House pointed out that they did not like the way the Senate was proceeding in this area to put all five titles in one bill. The distinguished Senator from Nebraska (Mr. HRUSKA) earlier in his debate pointed out that these titles in the Senate bill, the provisions of which are sought to be added or substituted for the provisions of the House bill, are merely a mishmash or collection of various bills that in the past have been rejected by Congress.

They must have been rejected because, if they were offered, they were not passed because they are not the law of the land as is evidenced by the fact that those offering the substitute are seeking to make them the law of the land.

We are going to have something on which to vote shortly. I have an amendment at the desk that I am going to call up in a moment.

Not satisfied with the fact that the Justice Department and the Antitrust Division of the Justice Department have jurisdiction in the area of antitrust actions, not satisfied with the fact that dozens, dozens, and dozens of these actions are being filed and have been filed, in order to provide that vast numbers of these suits and a multiplicity of such actions be filed, the House bill provides that the State attorneys general in all 50 States—and I believe, also, attorneys general of territories, if I am not mistaken—anyhow in the 50 States should have the right to file antitrust proceedings in the Federal court under the Federal antitrust provision.

Mr. President, it is fraught with great danger to the public, the consumer, busi-

nesses, large and small, causing a breakdown in the court system of the land, and in seeing unjustified and unfounded actions filed in the 50 States, disregarding the fact that the States themselves should determine the powers, duties, and responsibilities of the attorneys general. The House bill, I might say, is somewhat sounder than the provision of the Senate committee bill on the same subject. There are a number of differences in the bills. I shall point out a major one.

The Senate bill on this subject provides that the attorneys general in the various States can farm these actions out; so to speak, among their political cronies, as a reward for political support or political favors. Mr. President, in actions of this sort where millions of dollars in damages might be claimed or awarded, the very threat of such an action against a legitimate company has a very destructive effect upon that company because the company might barely be getting along and staying in the black, but if it is subjected to harassing litigation that could result in judgments of millions of dollars but only pittance in the range of only a few dollars to the individual persons, and with mammoth attorneys' fees being charged, it frequently behooves the company, rather than run the risk of being bankrupted by this type of litigation, to enter into a settlement.

In one case on record, where some drug firms were sued under the antitrust provision, where the liability could have been up in the billions of dollars, realizing that such a judgment against these companies would bankrupt all of them, they entered into a mammoth settlement in two stages, I might say, with the various States that had filed this type of a proceeding and settled these suits for, I believe, exactly \$200 million.

But one State wanted more than its pro rata share of that, so it did not settle and went ahead and tried the case. But it was held in the case that the defendant company, was innocent, that it had not violated the antitrust law; therefore, that State was awarded nothing. Even though the court found that these companies had not violated the antitrust law, since they agreed to settle they had to pay out in settlement rather than take the risk of even a larger judgment than \$200 million. I think some \$40 million of that went as a bonanza to the attorneys representing the various plaintiffs.

Mr. MORGAN. Mr. President, will the Senator yield?

Mr. ALLEN. I yield.

Mr. MORGAN. I just entered the Chamber, and I assume the Senator is talking about the tetracycline case.

Mr. ALLEN. That is correct.

Mr. MORGAN. The Senator mentioned one case when one State would not take it. That was my State, and I was the attorney general.

Mr. ALLEN. I would be delighted to hear from the Senator.

Mr. MORGAN. I shall inform the Senator a little about that case.

It is true that we did lose the case in the trial court, and there is now a motion pending for rehearing. I feel certain that some day the case will be retried. But I made it clear, before I filed that

lawsuit, and said so around the State, that if the State of North Carolina never recovered one penny from the lawsuit, it would serve a useful purpose, because it would let these major companies know that there was somebody who could get them to court.

I wish the Senator from Alabama could have seen that trial. It cost the State of North Carolina about a half million dollars.

I had one lawyer and two younger lawyers who were what we call "go-fers"—go for this and go for that, to help the other one. These five major companies relayed their attorneys down to North Carolina in groups of about 15. They had two or three lead-in lawyers, and there was one named Murphy. I recall asking him one day what he was going to say when his grandchildren asked him what he did for a living; and he was going to say, "Well, I defended the tetracycline case because I had been on it about 15 years."

I understand the point that the Senator from Alabama is making. But the other side of the coin is that the evidence is clear that during the period involved, in the late 1950's and the early 1960's, the American consumer, those people who needed these antibiotic drugs, were paying markups of 3,500 percent to 5,000 percent. I cannot believe that with all the legal staff these companies have, they would be willing to pay out these hundreds of millions of dollars.

Why did we turn it down? We were told, "Take this or nothing. In other words, this is a pittance." We wanted to try the issue, to show the people in North Carolina that we could.

There are some things about this bill I do not like, and I will be listening to the Senator debate and will be talking with him later on about it. But somewhere, in my opinion, there has to be and there should be a right for somebody to represent the people as a whole in these cases, or there will be little to deter the companies from doing what I think—well, since this matter is still in the courts, I will not try to pass judgment on them.

Mr. ALLEN. The decision was not made on the fact that the State of North Carolina was not properly in court. The decision was made, as I understand it, that there had been no violation of the antitrust law. So apparently somebody got into court under the existing law.

Mr. MORGAN. We did, but it cost the State of North Carolina a half million dollars to get into court. I do not believe that the individual consumer can fight that kind of opposition.

I will tell the Senator about the decision in the case. Those of us who are lawyers know that one of the findings of fact by the trial judge was that there was no direct evidence of a conspiracy. In what little law I practiced for 25 years, I never was able to prove many conspiracies by direct evidence. I believe that when this case ultimately is decided, the Supreme Court is going to say that you do not have to have direct evidence. So that case has not been concluded. They have paid out to all other States, and I am not

sure about the Federal Government, as to whether its case is still pending.

Mr. ALLEN. I thank the Senator for his contribution.

I suggest that when the Senator from Alabama completes discussing the matter—and he will be through in a few moments—the Senator from North Carolina make his views known.

The Senator from Alabama did not recall that it was the State of North Carolina that did not participate in the settlement, and the Senator from Alabama was in nowise critical of the handling of the matter. All he stated was that the Court found, and apparently on appeal to the court of appeals they found, that there had been no violation of the antitrust law. Apparently, the State of North Carolina and the other States were before the court, and it was not a question of somebody getting into court, because they were there, and the issue was not decided on that.

The point I was making was not related to whether it was a drug firm or a grocery firm or a taxi line or a public utility. The point I was making was that companies frequently can be shaken down by harassing actions and feel that, in the interests of their stockholders, they must make a settlement, rather than run the risk of being bankrupted by allowing the matter to go to court, where they would allow treble damages—not only the damages that had been received—and it might be over a period of years. This money that may have been made by the companies may have been plowed back into the business or paid out to stockholders, and a judgment in the billions of dollars could bankrupt any company.

So the point that the Senator from Alabama is making is that it is possible to harass these companies with unfounded and unjust claims; and the mere filing of such an action with such a tremendous potential liability requires the company, in the exercise of good judgment, to settle the claim, even though they feel they are not liable.

In the particular case to which I called attention, they had settled with 49 of the 50 States, and the 50th State chose to litigate it; and they found out, according to the district court and the court of appeals, that there was no liability at all.

These companies had paid out \$200 million, and they are going to have to get that somewhere in the future. The only place to get it is from the consumer. Very little of this money that is recovered in these cases actually goes to the individual consumer who has been damaged. They have some sort of procedure whereby they pay the unclaimed damages out to some cause, some State agency or some beneficiary of a State appropriation, as directed by the judge, and it very seldom in large amounts goes to the actual consumer who was damaged. His pro rata part might be \$1.51. He would have to establish his right to that money, and obviously he would not do it.

The main beneficiaries would be the favored attorneys who are filing this sort of proceeding. As I say, I do not think it would happen in my State, because I do not believe my attorney general would

handle the matter in that fashion; but it would be possible for attorneys general to make the assignment of these tremendous cases to favored attorneys, political supporters throughout the State.

The House bill does not have any such provision as that in it. The Senate committee, in its wisdom, either inserted or approved a provision in the Senate bill allowing this farming out of these suits all over the State.

That is one reason I favor the House provision.

The status of the parliamentary procedure at this time is that the House bill is before us. It provides just one thing: That is, the fact that attorneys general throughout the country can file these suits under the Federal law and in the Federal court. I feel that the State legislatures, the State governments, should determine what power, what authority, what jurisdiction its State officials shall have. If they want the Governor to have certain powers, the constitution or the code would stipulate what those powers would be. If they want the Lieutenant governor to preside over the Senate and do nothing else, the constitution would say that. If they want to define the powers of the attorney general, the State constitution or the code or a statute would prescribe those duties.

I do not favor the Federal Government's passing a law saying that State attorneys general shall have this authority. If the State legislature takes that action, that is another thing; that is, the State legislature of the State of Alabama taking that action. Of course, I would gladly abide by the decision of our State legislature and the Governor, of course, who would sign any bill or reject any bill passed by the legislature.

Mr. President, I have an amendment at the desk that I am going to call up in just a moment. Before doing so, I am going to tell just what it does.

As I say, the House bill is before us, but, in effect, the Senate bill is before us because the provisions of the Senate bill have been offered as a complete substitute to what the House sent to us. Based on the testimony of House Members before the Committee on Rules with respect to the House bill, where a number of them stated their dissatisfaction with the fact that the Senate was going to put all of these titles into one bill and try to ram it through, I feel that in conference, there would be a good chance that the House would not agree to the Senate bill or the provisions of the Senate bill. If the Senate conferees insisted on a provision of the Senate bill and the House conferees insisted on the provisions of the House bill, we would end up with no bill. The House prefers to have separate bills covering these titles.

Now, let us see what this ploy is that is taking place on the floor here—or maneuver, shall I say, rather than ploy. By seeking to add the provisions of the Senate bill containing five titles to the House bill that does not have a title—it does not have any titles in it, just one provision, one basic provision authorizing the State attorneys general to file these suits. By this maneuver, the proponents of the pending substitute—the

substitute being the provisions of the Senate bill—seek to prevent the House from expressing its will on these individual titles.

That is the picture, Mr. President. The House wants to consider these titles separately, individually, take some, reject some, and they sent one over. I understand that others are on the way over. That allows the House and the Senate to have just one matter up for consideration. Going the route of the distinguished Senator from Michigan (Mr. PHILIP A. HART) and the distinguished Senator from Massachusetts (Mr. KENNEDY), we would have all five of these titles rammed down our throat and rammed down the throat of the House, because when the five-title amendment gets back to the House, the rank and file House Member is not going to have anything to say about his feelings on these individual titles. What they will do is very quickly ask for a conference or, in the alternative, the Senate, on passing the substitute to the House bill and then through final enactment of the bill by the Senate, would pass a resolution or move that the Senate insist on its amendments and request a conference. So all they will do over in the House is order a conference, so these other four titles would not be before the House itself. They would never have an opportunity to vote on these titles separately. If we just have a vote on this substitute, the Senate Members would not have any opportunity to vote on these measures separately.

There are a couple of possibilities. One, of course, would be to seek to strike out these titles one by one or defeat the substitute. Well, that is going to be pretty difficult to do, because everybody is for antitrust legislation. I am for it; other Senators are for it.

But agreeing on all five titles—with some good, possibly, and some bad, certainly—does not give us an opportunity to vote on these separate titles.

Mr. President, I have an amendment at the desk, or a substitute. What it does is this: The House bill is pending; the substitute seeking to add four more titles, making five in all, but having a different version on the *parens patriae* provision under which the State attorneys general have this authority, is pending. If adopted, it would, in effect, wipe out the House provision and substitute the provisions of the Senate bill for the House bill. Then that would go over, as I say, and the House, in effect, would send it to conference and then have an up or down vote on it, because we cannot amend a conference report. We either have to accept it or reject it or send it to the committee.

So this substitute that is at the desk does this: It offers as a substitute the provisions of the House bill on this one subject, *parens patriae*, the conferred power on the State attorneys general to file antitrust proceedings in the Federal district court of their States and to farm out these proceedings to favored attor-

neys. That is what the Senate bill provides. Now, the House bill does not have that provision in it about farming the cases

out. It makes the Attorney General handle these cases.

So my substitute takes the House bill, the one subject, without the power to farm out cases to the favored few, and it adds one more section, and that section says that as to my particular State this act shall not apply unless that State by law elects to come under the provisions of this act.

I might say—and I told certain of the sponsors of the pending substitute—that so far as I am concerned—and not speaking for anyone else—if this substitute is adopted and then is adopted as a substitute to the House bill, and then is finally voted on by the Senate, I would offer no further amendments and no further objection to the bill, and would have then the House bill providing the *parens patriae* concept, so-called. Why, I do not know. It certainly is a misnomer. We would have the House bill, with the proviso that as to any particular State it does not apply unless the State, by legislative act that becomes law, does elect to come under its provisions.

So, Mr. President, I call up my amendment in the nature of a substitute and ask that it be reported.

THE PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk proceeded to read the amendment.

Mr. ALLEN. Mr. President, I ask unanimous consent that further reading of the substitute amendment be dispensed with inasmuch as I have explained it, and it does take the House bill in full with this added amendment.

THE PRESIDING OFFICER. Without objection, it is so ordered.

The amendment in the nature of a substitute is as follows:

In lieu of the language proposed to be inserted, insert the following:

That this Act may be cited as the "Antitrust *Parens Patriae* Act".

SEC. 2. The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), is amended by inserting immediately after section 4B the following new sections:

"ACTIONS BY STATE ATTORNEYS GENERAL"

"SEC. 4C. (a) Any State attorney general may bring a civil action, in the name of the State, in the district courts of the United States under section 4 of this Act, and such State shall be entitled to recover:

"(1) threefold the damages and the cost of suit, including a reasonable attorney's fee, as *parens patriae* on behalf of natural persons residing in such State injured by any violation of the antitrust laws; or

"(2) single damages and the cost of suit, including a reasonable attorney's fee, as *parens patriae* with respect to any injury to the general economy of such State or any political subdivision thereof, as measured by any decrease in revenues, or any increase in expenditures, or both, of such State or any political subdivision thereof sustained by reason of any violation of the antitrust laws, except that such damages shall not be duplicative of any damages recoverable under paragraph (1).

"(b) In any action under subsection (a) (1), the court may in its discretion, on motion of any party or on its own motion, order that the State attorney general proceed as a representative of any class or classes of persons alleged to have been injured by any

violation of the antitrust laws, notwithstanding the fact that such State attorney general may not be a member of such class or classes.

"(c) In any action under subsection (a) (1), the State attorney general shall, at such time as the court may direct prior to trial, cause notice thereof to be given by publication in accordance with applicable State law or in such manner as the court may direct: *Provided*, That such notice shall be the best notice practicable under the circumstances.

"(d) Any person on whose behalf an action is brought under subsection (a) (1) may elect to exclude his claim from adjudication in such action by filing notice of his intent to do so with the court within sixty days after the date on which notice is given under subsection (c). The final judgment in such action shall be res judicata as to any claim arising from the alleged violation of the antitrust laws of any potential claimant in such action who fails to give such notice of intent within such sixty-day period, unless he shows good cause for his failure to file such notice.

"(e) An action under subsection (a) (1) shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given in such manner as the court directs.

"MEASUREMENT OF DAMAGES"

"SEC. 4D. In any action under section 4C (a) or (b) or in any other action under section 4 of this Act which is maintained as a class suit, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit, without the necessity of separately proving the individual claim of, or amount of damage to, each person on whose behalf the suit was brought.

"DISTRIBUTION OF DAMAGES"

"SEC. 4E. Damages recovered under section 4C(a) (1) shall be distributed in such manner as the district court may in its discretion authorize, subject to the requirement that any distribution procedures adopted afford each person a reasonable opportunity to secure his appropriate portion of the damages awarded less unrecovered costs of litigation and administration.

"ACTIONS BY ATTORNEY GENERAL OF THE UNITED STATES"

"SEC. 4F. (a) Whenever the Attorney General of the United States has brought an action under section 4A of this Act, and he has reason to believe that any State attorney general would be entitled to bring an action under section 4C(a) (1) based substantially on the same alleged violation of the antitrust laws, he shall promptly give written notification to such State attorney general with respect to such action.

"(b) If the State attorney general fails or declines to bring such an action under section 4C(a) (1) within one hundred and eighty days after the date of receipt of the notice and if the Attorney General of the United States believes that such an action would probably lead to a substantial recovery of damages, then he may bring such an action himself on behalf of the persons residing in such State injured by the alleged antitrust violation. Any such action shall be brought in the district in which the action under section 4A is pending and shall be consolidated therewith.

"(c) To assist a State attorney general in evaluating the notice and in bringing any action under section 4C of this Act, the Attorney General of the United States shall, upon request by such State attorney general, make available to him, to the extent per-

mitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under section 4C.

"(d) In any action under subsection (b) of this section, the provisions of sections 4C (b), (c), and (d), 4D, and 4E shall apply.

"FEDERALLY FUNDED PROGRAMS

"SEC. 4G. (a) In any action with respect to any federally funded program affected by any violation of the antitrust laws, a State, political subdivision thereof, or any other person shall be entitled to recover—

"(1) treble the damages for the total amount of overcharges, or other injuries, sustained by such State, political subdivision thereof, or any other person, respectively, in connection with such program; and

"(2) the actual damages for the total amount of overcharges, or other injuries, sustained by the United States in connection with such program.

"(b) (1) The Attorney General of the United States shall have the right to intervene in any such action to protect the interests of the United States.

"(2) The Attorney General may bring such an action on behalf of any State if—

"(A) he believes that cause exists for bringing such action;

"(B) he so notifies the State attorney general in writing; and

"(C) the State attorney general falls or declines to bring such action within the one-hundred-and-eighty-day period which begins on the date of the receipt of such notification.

"(c) The United States shall be entitled to secure out of any damages recovered under this section the actual damages for the total amount of overcharges, or other injuries, sustained by the United States.

"DEFINITIONS

"SEC. 4H. For purposes of this section and section 4C, 4D, 4E, 4F, and 4G:

"(1) The term 'State attorney general' means the chief legal officer of a State, or any other person authorized by State law to bring actions under this Act.

"(2) The term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

"(3) Except for purposes of section 4G, the term 'antitrust laws' does not include sections 2, 2A, 2B, and 7 of this Act."

SEC. 3. The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), is amended—

(1) in section 4B (15 U.S.C. 15B), by striking out "4 of 4A" and inserting in lieu thereof "4, 4A, 4C, or 4G"; and

(2) by adding at the end of section 16 of such Act the following: "In any action under this section, the court shall award reasonable attorneys' fees to a prevailing plaintiff."

SEC. 4G. This Act shall not be applicable in a particular State until that State shall provide by law for its applicability as to such State.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama in the nature of a substitute.

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, if I may have the attention of the Senator from New York, I think we are prepared to vote on this Allen amendment right now.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. PHILIP A. HART. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PHILIP A. HART. Mr. President, in rising to oppose the amendment offered by the able Senator from Alabama, I would make and I hope briefly just a few points.

As we see it, the amendment is an attempt to deny to consumers the meaningful remedy which parens patriae provides. Why do I say that? Well, if in order to make available to the consumers and to discipline the marketplace it is required that 50-odd State legislatures say "yes," if I were a young man I would still not predict that I should be alive when more than a third of them would say "yes."

Mr. ALLEN. Mr. President, will the Senator yield for 1 moment?

Mr. PHILIP A. HART. Yes.

Mr. ALLEN. The Senator, I believe, has misconstrued the amendment. What the amendment says is that as to a particular State it would not be applicable unless the State, by law, should provide for its applicability in that State. Now, it might be it would take some time before all 50 would come under it. But as many States as want to come under it would come under it, and it would not take all 50 to put it into effect.

Mr. PHILIP A. HART. Indeed no.

My point was that if each State is required to affirmatively grant to the Attorney General the right to proceed as this title would offer, I would be a very old man before about one-third had gone even that far.

I recognize that each State, independently of the attitude of 49 others, can take the action.

I say that because we had some experience with the degree of pressure, the intensity of the pressures that have been brought to bear against this legislation at the Federal level.

We can anticipate, I believe, precisely that kind of pressure on each of the State legislatures, and a legislator is given pause when an important business constituent comes to him and says, in effect, "For God's sake, don't let them do that, it will drive me up the wall; all will be lost."

We know the lobbying that is going on in this Capitol, beginning with the effort over on the House side that produced the basic House bill.

My first point, that because of the extreme, that would attach if this condition is imposed, many consumers in this country would be denied for a long time the benefits that those of us who reported the bill see in the title to which this amendment would attach.

It would have the effect, second, of denying the benefits of other titles that are contained in the substitute bill that was reported by the Committee on the Judiciary. One of those titles, the Antitrust Civil Process Act, title 2, is a title which the President and the administration has called for in at least two state of the Union messages.

It would deny the benefits of the premerger notification title.

A third point I would suggest in opposing the amendment is that it would bring into question—perhaps the Senator from Alabama can clarify and conceivably eliminate this—it would bring into question whether the existing authority which State attorneys general now have to sue under the Federal antitrust law under rule XXIII would be vitiated.

Mr. ALLEN. It would not disturb that. It applies to the added power, authority, and jurisdiction given by this act. It would not apply to existing authority that it now has.

Mr. PHILIP A. HART. I thank the Senator.

I think we should recognize that the States, through their legislators, would have the opportunity to act to deny a State attorney general the use of the authority which is granted here.

The approach would be the converse of that which is proposed by the Senator from Alabama. He would require affirmative action approving the use of the power which we grant.

I am suggesting the preferable way an authority is granted, to use a Federal law, would be for the legislature to say, "No, we reject the authority."

Mr. ALLEN. Will the Senator yield?

Would the Senator agree to that provision?

Mr. PHILIP A. HART. I see no need to make explicit what I believe to be implicit.

Is the Senator's question, would we agree to a provision that expressly authorized a State legislature to deny such power to the State attorney general?

If I am correct in saying they have that authority anyway, I would see no need for it. If that amendment was offered, it would present a very different question, and I believe I would reserve my position.

Mr. ALLEN. If this amendment does not carry, it had been planned that the Senator from Alabama would offer the amendment the Senator speaks of so approvingly and I hope that approval continues.

Mr. PHILIP A. HART. I was reserving my ultimate judgment as to my position.

The amendment would have the effect of denying fluid class recovery to a State attorney general by leaving it up to a private plaintiff consumer class action, and I am not sure that the Senator from Alabama would really want that.

The position of the Senator from Michigan is that the adoption of this amendment—admittedly, I am making a prediction—adoption of this amendment would have the effect of denying for a very long period the benefits we conceive in this title, for consumers in this title, the citizens of a great many States.

As I say, I make that prediction based upon the kind of pressure that could be applied to a State legislature. I make the prediction with some measure of confidence, although confessedly I know of no statistics which I can depend upon.

I believe the Senator from Alabama wanted a rollback on this.

Mr. President, I suggest the absence of a quorum and ask that the attaches

see if it is possible to persuade enough Senators to come to the floor in order to give us the rollcall.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HRUSKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HRUSKA. Mr. President, I rise in support of the pending amendment, the amendment which is proposed by the Senator from Alabama. It is an amendment, as I understand it, by way of a substitute for the pending measure.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HRUSKA. The amendment is offered as a substitute for the pending measure. The substitute would consist of the bill approved by the other body, H.R. 8532, with one modification and one amendment. That amendment is contained in amendment No. 1702, and reads in this way:

This title shall not be applicable in a State until that State shall provide by law for its applicability as to such State.

So my discussion will be on the amendment which is offered as a substitute.

Mr. President, this substitute authorizes State attorneys general on behalf of natural citizens residing in the State to sue for damages sustained by reason of antitrust violations. Under the bill as it now exists in amendment No. 1701, the State would no longer be required, as it is now, to be an injured consumer in order to be eligible to sue. A suit filed under a pending bill would really result in a class action suit as opposed to a pure, a historic, or a conventional *parens patriae* suit.

Class actions, Mr. President, are very complex. Many factors must be weighed carefully, deliberately, and judiciously in order to determine whether a given set of circumstances is such as to warrant a courts entertaining such a suit, and upon undertaking it to apply rules and procedures suitable to a fair trial and disposition of the case.

Mr. President, the substitute has a number of improvements over title IV of the bill which was processed and approved by the Committee on the Judiciary.

One of the defects of the Senate committee-approved measure is that it does not contain any provision for court leave to file and pursue a class action before it may be filed and tried. It is considered that it would be wise to have court leave, because of the many factors that are considered necessary to be satisfied to furnish safeguards for fair trial, safeguards against abuses, and as to requirements for due process.

During the years, and after much experience in courtrooms over the land, the Federal court system has developed rule 23, dealing with the subject of class

actions. That rule carefully specifies various factors that go into the identifiability of the parties, to determine whether or not they are in a similar situation with those who allege that they are aggrieved by certain facts, certain violations of the antitrust law.

Also, as to proper notice, that must be given in order to formulate those who will be entitled eventually to participate in the recovery, and to give opportunity for those who wish to divorce themselves and to opt themselves out of the proceedings, if they choose, thus preserving their cause of action on their own motion and on their own resources.

There are other provisions in the bill as approved by the Senate Committee on the Judiciary which are not contained in the House-passed measure. One of them is that the contingent fee has been deleted from the House bill. There is an express provision that the contingent fee for the attorneys handling the case on behalf of the plaintiffs shall not be allowed.

The bill as approved by the Senate committee, Mr. President, is subject to this objection: That it undertakes to effectively eliminate the operability and the application of Rule 23 of the Federal Rules of Civil Procedure. It substitutes, in its own terms, the rules by which the Federal courts will be governed and with which they will be forced to comply in order to carry on the prosecution of a lawsuit of this type.

There are many of us who feel that after the development and the evolution of the rules to the point where they have been codified by the Supreme Court and the Federal court system, they should not be discarded; they should be retained, because they are on valid ground, to see that the rights of all parties are properly taken care of, and that due process is subserved and complied with.

Another respect in which the Senate passed bill is under very considerable criticism has to do with the containment in it of the formula for measuring and recovering damages. Damages, under the Senate bill, may be proved and assessed in the aggregate on the basis of statistical or sampling methods, or subject to the method of reasonable estimation, if the court in its discretion gives permission, without separately proving the fact or amount of individual injury or damage to such actual persons.

Mr. President, if that formula is enacted into law and made the governing principle in suits of this kind, it will be the first example of the allowance and award of damages without proving damage accruing to the plaintiff who is entitled to the benefit of the bill.

It is elementary, Mr. President, that before any recovery for damages can eventuate, two things must be proved: That some damage was inflicted, and then, second, the extent of the damage suffered by the plaintiff or by the plaintiffs, if there be more than one involved.

This is a repudiation of that very salutary rule, and to that extent it is not considered within the general qualification of being a constitutional measure or a constitutional provision.

On this subject, Mr. President, the

committee in the Senate was favored with a memorandum offered by Dean Erwin N. Griswold, for many years Solicitor General of the United States, for many years dean of the Harvard Law School, and considered by many as perhaps one of the leading intellects in the field of jurisprudence and the practice of law, particularly constitutional law.

He calls attention to the fact that the provision for damages under a "fluid recovery" formula is not within the constitutional jurisdiction of the Federal courts. One of the reasons he assigns, is that the Federal courts have jurisdiction which is limited to the consideration of "cases and controversies"—and I quote those two words because they are listed in the Constitution—"cases or controversies" involving actual parties properly before the court.

Dean Griswold wrote:

The law of "case or controversy" may fairly be said to be lawyers' law.¹ But it is real. It reflects the language of the Constitution; and the language is not accidental. It was carefully chosen, and it was designed to limit the federal courts to consideration of cases of "a Judiciary nature,"—that is, to the decision of controversies between parties who are before the court, and subject to appropriate rules of proof.

In the case of "fluid recovery," the "case or controversy" requirement is not met, for the persons on whose behalf recovery is obtained make no claim, are not parties to the case, and provide no proof. For the most part, they are simply unknown.

Although no precise authority on this question is known—probably because the possibility of such a contention has seemed so far-fetched...

That it had never been opposed before. This is a very innovative proposition that is being advanced in the form of trying to legalize and put in statutory form the authority and the power to recover under the formula of "fluid recovery." But:

It seems obvious that a claim on behalf of such persons does not meet the requirements of Article III of the Constitution, limiting the jurisdiction of the federal courts to "cases and controversies" since such a claim does not arise between actual parties, presenting a real issue and supported by proof designed to show an actual, rather than a supposed or hypothetical, injury.

There are a number of questions that go to the point to show that this question under article III is a substantial one which would be given serious consideration by the courts.

In the *Eisen* case, which is found in 479 F. 2d, at 1005, a decision vacated on other grounds but, nevertheless, a case involving an effort to maintain a fluid recovery on behalf of all persons who had bought or sold odd lots on the New York Stock Exchange between certain years, it was estimated that there were 6 million members of this group, of whom 2¼ million were identified. That is all that could be identified.

The basic question in that case was who should bear the cost of giving notice to the members of the class who could be identified. The court of appeals held that this burden could not be put on the defendant under a proper construction of Rule 23 of the Federal Rules of Civil Procedure. It would be unfair to penalize

a defendant in a lawsuit which had not been proved. In fact the suit had not yet qualified to the fullest extent required by rule 23 to be prosecuted to its conclusion, one way or the other. To impose the cost of notice to the 2¼ million prospective recipients upon the defendant would be most unfair indeed.

This conclusion on the part of the circuit court was affirmed by the Supreme Court, but the court of appeals went further in an opinion by Judge Medina and discussed the impropriety of fluid recovery which had been suggested by the district court as a possible solution to the unmanageability problem posed by the case, and at page 1018 I quote this language in 479 F. 2d:

"Even if amended Rule 23 could be read so as to permit any such fantastic procedure, the courts would have to reject it as an unconstitutional violation of the requirement of due process of law."

And then a little further along on that same page, the opinion by Judge Medina continued:

We hold the "fluid recovery" concept and practice to be illegal, inadmissible as a solution of the manageability problems of class actions and wholly improper."

There are other cases, Mr. President, of similar import and of similar context and result. One of them in the Ninth Circuit Court in re Hotel Telephone Charges, 500 F. 2d at page 86. Now this fluid recovery theory, advanced in such novel and, as the court suggested, fantastic fashion, is contained in the Senate title 4 of the bill which is contained in amendment 1701. It is not contained in the House-approved bill which we find in the terms of the substitute which the Senator from Alabama is now offering in the premises.

Judge Duniway in the case in which he ruled on this same proposition in 508 F. 2d at page 236 writes language which certainly is apt to the consideration of the question of case or controversy.

It reads in the following words:

It is inconceivable to me that such a case can ever be tried, unless the court is willing to deprive each defendant of his undoubted right to have his claimed liability proved, not by presumptions or assumptions, but by facts, with the burden of proof upon the plaintiff or plaintiffs, and to offer evidence in his defense. The same applies, if he is found liable, to proof of the damage of each "plaintiff".

Here it can be fairly contended, Mr. President, that without such proof there is no case within the constitutional sense of that word as it is used in article III of the Federal Constitution.

Mr. President, there is another case which I shall refer to because it certainly zeroes in on this proposition of a definition and an attempted application of a theory which has already been thoroughly discredited by respectable and high level judicial precedent.

Mr. MORGAN. Mr. President, will the Senator yield?

Mr. HRUSKA. I am happy to yield for a brief question.

Mr. MORGAN. So I can more clearly follow what the Senator is trying to present, will he explain to me the real

significance of the amendment that we are now considering? As I understand it, does it not delete, in effect, the Hart-Scott substitute and reinstate the House bill? Is that the effect of the amendment?

Mr. HRUSKA. That is right. That is its thrust.

Mr. MORGAN. In other words, that is the thrust of the amendment, and it also adds one further provision, as I understand it, and I may not be clear on it, because it is an unprinted amendment, that the act itself shall not then be applicable in any State until that State provides by law for the applicability to such State. Is that the Senator's understanding also?

Mr. HRUSKA. Yes, that is the language of amendment 1702 which is a part of the substitute offered by the Senator from Alabama.

Mr. MORGAN. I was trying to get clear in my own mind then. If I understand it, the amendment of the Senator from Alabama would, in effect, delete the Hart-Scott substitute, and we then would relate back to the House bill, as it came out, but it adds an added provision that even the House bill will not become effective until such time as any State legislature shall apply or shall pass an act.

Mr. HRUSKA. That is the intent, as explained by the Senator from Alabama in presenting his substitute. That is correct.

Mr. MORGAN. I raise that question because it was not clear to me and because it was a little different from what I had expected and I thought maybe other Members of the Senate or their staffs should understand that that is the case so that they can begin to consider the argument and the debate in that light.

Mr. HRUSKA. I thank the Senator for calling it to my attention, and in case there is any doubt in the minds of any Senators, who are assembled in such numbers in the Chamber at the present moment, his emphasis and his question will be very enlightening and very helpful to my proposition which is that the House bill is a superior measure to the bill that was processed by the Senate; therefore, the substitute of the Senator from Alabama should be approved and should be made the order of the day. Again, I state that by way of making a record because I know many people are very taken with this idea of fluid recovery, aggregate and averaging of damages, with no proof required, Mr. President. The judge is authorized by the language of the statute to use either the basis of statistical or sampling methods, whatever that is, Mr. President, or such other reasonable method of estimation as the court in its discretion may permit without separately proving the fact or the amount of individual injury or damage to natural persons.

That falls four-square within the purport of the judicial opinions which I have been quoting, that there is no case or controversy within the meaning of article III of the Constitution if there is no showing and if there is no fact as to the amount of individual injury or damage of even of the existing suspect's damage.

That is how farfetched the bill is which was approved in the Senate Committee on the Judiciary and which is now here in the form of a substitute to the House-approved bill. It is almost unthinkable.

However, in order to sort of clinch the point, I shall read some language from another case which was decided in 1975, the case of Warth against Seldin. This turned on an issue of standing which is required to maintain a suit in the Federal court system, and it is closely related to the proposition of case or controversy.

The case was a suit brought by organizations and residents of Rochester, N.Y., to test the validity of a zoning ordinance in the town of Penfield, adjacent to Rochester.

The contention was that this ordinance excluded persons of low and moderate income from living in Penfield. The suit originally was filed by an organization and eight individual members of that organization, called Metro Act of Rochester. It was filed on behalf of themselves and all persons similarly situated.

The court held that the plaintiffs did not have the requisite standing to maintain the suit; and, in reaching this conclusion, the court said:

In essence, the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. The inquiry involved both constitutional limitations on Federal court jurisdictions and the prudential limitations on its exercise.

I skip some lines which are principally citations of decisions bearing on that statement. He goes on to say in his opinion:

In its constitutional dimension, standing imports justiciability—whether the plaintiff, in other words, has made out a case or controversy between himself and a defendant within the meaning of article III. This is the threshold question in every Federal case, determining the power of the court to entertain a suit. As an aspect of justiciability, the standing question is whether the plaintiff has alleged a personal stake in the outcome of the controversy as to warrant his invocation of the Federal court jurisdiction to justify exercising that court's remedial powers on his behalf.

The article III judicial power exists only to redress or otherwise protect against injury to the complaining party, even though the court's judgment may benefit others collaterally.

The court also said at page 499 of that opinion:

Even when the plaintiff has an alleged injury sufficient to meet the case or controversy requirement, this court has held that the plaintiff generally must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties.

Mr. President, it seems to me that with these considerations in mind, with the idea in mind that a number of very substantial improvements are contained in the House bill over the bill which was approved by the Senate committee, much merit attaches to the amendment by way of a substitute offered by the Senator from Alabama, and it should be approved.

It would be a definite improvement over a bill which is getting to us by a rather odd method, in the first place,

in its processing in the committee and, in the second place, to get to the attention of the Senate not on the direct merits of the bill approved by the Senate Committee on the Judiciary, but, rather, by way of a substitute for a bill approved by the House and consisting of only one title; whereas, the substitute to be found in amendment No. 1701 contains five titles.

Mr. President, it would be good ridance to approve the amendment proposed by the Senator from Alabama, because by that means, if it is carried to its logical conclusion, we will have disposed of this five-headed monster, which has not been properly and judiciously processed nor presented to the Senate in a way that will allow for orderly, logical, and rational consideration and understanding so that we can make an intelligent decision.

That would be another and perhaps an overriding reason why it would be well to approve the amendment proposed by the Senator from Alabama, so that we could proceed to that conclusion and that disposition.

Mr. President, I yield the floor.

Mr. MORGAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MORGAN. Mr. President, I am very interested in this bill, and I have been for a long time, because I believe that it is a vital matter, if we are going to be able to enforce the antitrust laws of our country and if we are going to be able in any way to restore some semblance of competition into some of the areas in which there has been a great concentration of power in the last few years.

The effect of this amendment—and there should be no mistake about it—as the distinguished Senator from Nebraska has indicated, is to strike the entire substitute amendment proposed by the Senator from Michigan (Mr. PHILIP A. HART) and the Senator from Pennsylvania (Mr. HUGH SCOTT). If that is not bad enough, it adds a provision that would require a State legislature to pass an act authorizing the provisions of the bill before it could become effective.

I know that sounds good to those of us who believe in States' rights, and I am one of them. But this bill will affect more than any given State. This bill will affect corporations that do business all over the State and all over the Nation. I think to gut the bill in such a way as to make it applicable only to a State here or there where the State legislature might, in effect, decide to pass it would strike the entire effectiveness of this bill. I say in all candor, Mr. President, that many times, the State legislatures do not have the time or the staff or the expertise to study and enact complex, complicated

antitrust legislation. That is why it is so difficult to get that kind of legislation by.

This bill also, I think we should make no mistake about it, knocks out completely the *parens patriae* portion of the Senate bill and leaves the House bill intact. That, in effect, knocks out all contingency fees for attorneys in such matters.

I, for one, Mr. President, do not particularly like contingency fees in antitrust matters. When I joined, as attorney general of North Carolina, in the antibiotic drug suits against several major drug companies, I was solicited, frankly, by a number of attorneys who specialized in this kind of legislation.

North Carolina did not associate any of these attorneys, even though we were opposed, literally, by more than, I would say, 50 and as many as 100 attorneys at one time. They came in in droves and we had one attorney devoting his time to it. We at least were able to bring the case to trial. But not many other attorneys general in this country were in a position to do that. I think we talked about it at one time, that the combined staff of all the attorneys general of America did not equal the combined legal staff of seven of the major oil companies.

So, you see, the attorneys general of this country are simply not equipped to deal with the power that is concentrated in some areas of our economy.

Our bill would permit contingency fees, but it puts some rather severe restrictions and limitations on these. That is, it bases them, of course, first of all, on success, and also on an hourly basis, which takes away some of the incentive of lawyers that I think sometimes cross over that thin barrier between ethical and unethical conduct.

But, Mr. President, there is no area of law, to my knowledge, that is more complex than antitrust litigation. It takes lawyers who are willing to devote not only their time and effort, but their entire lives, to be able to meet on equal footing with the great legal resources of those industries that would monopolize some areas.

By permitting, as we do in the Senate bill, contingency fees with some reasonable limitations which the courts themselves must approve, then I think we will have added a very effective weapon and a very effective tool to the law which will help restore competition into the marketplace.

Further than that, I think my fellow attorneys ought to know and my fellow Senators ought to know that if the Senate is going to undertake to outlaw contingency fees in this case, when are we going to move to outlaw contingency fees in other areas?

I know it would be popular to say we are going to outlaw contingency fees in negligence actions because lawyers sometimes charge as much as a third and a half, and I grant that that is true. But they also sometimes help worthy litigants who are entitled to their day in court, who could not otherwise have their day in court.

I believe, Mr. President, that the provision as we now have it in the Senate bill would be a great deal of help.

Mr. President, I have here a question with regard to contingency fees and I ask unanimous consent of the Senate that the question, which is designated "Contingency Fees"—question 11 and answer 11—be printed in the Record at this point.

There being no objection, the document was ordered to be printed in the Record, as follows:

CONTINGENCY FEES

Question 11: Won't lawyers get most of the funds through the typical $\frac{1}{4}$, $\frac{1}{3}$, or $\frac{1}{2}$ contingency fee?

Answer 11: Absolutely not. The Committee was aware of this potential and adopted an amendment to prevent it from occurring.

Section 4C(e) requires court approval of plaintiffs' attorneys' fees awarded under section 4C(a) (2). The Committee included this provision to assure both the reasonableness of the fees and that the bulk of the State recovery would be distributed to consumers—not lawyers. Both section 4 of the Clayton Act and Rule 23 of the Federal Rules of Civil Procedure require court approval of attorneys' fees under generally accepted standards articulated in *Lindy Bros. v. American Radiator and Standard Sanitary*, 487 F. 2d 161 (3d Cir. 1973) and *City of Detroit v. Grinnell*, 495 F. 2d 468 (2d Cir. 1974). It is the Committee's intention that attorneys' fees in section 4C cases be approved under the same criteria and the court is directed to look behind any fee arrangements which may be made between the State and its counsel. The criteria established by the court in *Lindy Brothers* for approving attorneys' fees are set forth below. In short, the fee is determined primarily on the basis of the number of hours spent on the case.

In awarding attorneys' fees, the district judge is empowered to exercise his informal discretion.

In detailing the standards that should guide the award of fees to attorneys successfully concluding class suits, by judgment or settlement, we must start from the purpose of the award: to compensate the attorney for the reasonable value of services benefiting the unrepresented claimant. Before the value of the attorney's services can be determined, the district court must ascertain just what were those services. To this end the first inquiry of the court should be into the hours spent by the attorneys. * * * After determining, as above, the services performed by the attorneys, the district court must attempt to value those services. * * * A logical beginning in valuing an attorney's services is to fix a reasonable hourly rate for his time—taking account of the attorney's legal reputation and status (partner, associate). Where several attorneys file a joint petition for fees, the court may find it necessary to use several different rates for the different attorneys. Similarly, the court may find that the reasonable rate of compensation differs for different activities. * * * While the amount thus found to constitute reasonable compensation should be the lodestar of the court's fee determination, there are at least two other factors that must be taken into account in computing the value of attorneys' services. The first of these is the contingent nature of success. * * * In assessing the extent to which attorneys' compensation should be increased to reflect the unlikelihood of success, the district court should consider any information that may help to establish the probability of success. * * * The second additional factor the district court must consider is the extent, if any, to which the quality of an attorney's work mandates increasing or decreasing the amount to which the court has found the attorney reasonably entitled. In evaluating the quality of an attorney's work in a case, the district court should

consider the complexity and novelty of the issues presented, the quality of the work that the judge has been able to observe, and the amount of the recovery obtained. * * * The value to be placed on these additional factors will, of course, vary from case to case. (487 F.2d at 166-169)

The Committee concluded that this provision was fair and equitable to all concerned parties. It considered and rejected an amendment to prohibit all contingency fees. Such a prohibition would severely limit the usefulness of Title IV for several reasons. First, most States have a small attorney general's office, and an even smaller antitrust staff. States simply do not have the in-house capability of sustaining a complex multi-year antitrust trial. Nor do many State attorneys general's offices have the budget to advance upwards of several hundred thousand or even million dollars in attorneys' fees to outside counsel, or to pay such fees if judgment is rendered for the defendant.

The Committee emphatically rejected the notion that a court approved contingency fee is either immoral or unethical, particularly when, as is the case here, the amount is subject to court approval upon prescribed criteria. To the contrary, it is often the only way to secure effective representation. As put by Virginia attorney general Andrew P. Miller:

"Another way to cripple the effectiveness of this bill would be to deny the Attorneys General, the right every other citizen enjoys, to contract for legal services on whatever basis, in his judgment, suits the needs of a particular case. At this point, substantial antitrust staff are not widespread at the State level. Furthermore, undertaking one major *parens patriae* suit can absorb the time of numerous staff persons for several years. Accordingly, this bill will go unused, and the rights created unenforced to the fullest extent possible. If the Attorneys General are not permitted to contract for expert antitrust counsel whose fees will be paid out of subsequent settlement or judgment, if any. We share the concerns of those who believe that attorneys' fees should be kept within reasonable limits. Therefore, we would support an amendment which would require the approval of the district court for any attorney fee arrangement according to standard attorney fee criteria."

Those who advocate prohibiting contingent fees contend that a contingency arrangement will encourage the filing of frivolous suits and unnecessarily subject defendants to harassment and to substantial legal and other fees incident to defending suits filed in bad faith. The Committee found the contrary to be the case. If plaintiff's attorneys fees are contingent upon success, this fact should weed out and deter the filing of frivolous or questionable cases. Moreover, section 4C(f) provides for the award of reasonable attorneys' fees to a prevailing defendant if the defendant establishes that the State attorney general acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

It should be stressed that the contingency fees authorized under this provision are not a percentage of the recovery. The contingency fees authorized are based on success, but computed on an hourly rate.

As Congresswoman Barbara Jordan (D-Tex.) stated (contained at page 27 of House Report No. 94-499 (94th Congress, 1st Sess.):

"I am concerned that a flat ban on 'contingency fees' will effectively place the services of perfectly ethical and highly knowledgeable attorneys beyond the reach of the States.

"There is another vital point at stake. The contingent fee is not merely an honorable means of financing litigation for those who would otherwise be unable to afford it until

the award of final judgment. It is also recognized as an important tool for weeding out the frivolous and unmeritorious case on the basis of expert assessment. It is highly unlikely that a lawyer knowledgeable in any field will be prepared to invest large quantities of his own time and effort in a case on the basis that he will be uncompensated unless he obtains a successful result for the client, unless he believes after careful examination that the case has serious merit.

"This point is responsive to two concerns which have been expressed by opponents and critics of the bill. Business interests have argued that the enactment of this legislation will bring a plethora of unfounded lawsuits for enormous sums of money, which they will have to defend at great expense. And members of the committee have on several occasions questioned whether the law might not present irresistible temptations to politically ambitious state officials bent on making a reputation without regard to the ultimate disposition of the cases they bring. "Neither of these unfortunate predictions is remotely likely to come true if the economic judgment of the legal experts is invoked in the evaluation of cases through the use of the contingent fee."

Mr. ALLEN. Will the Senator yield?

Mr. MORGAN. I am delighted to yield.

Mr. ALLEN. The Senator from North Carolina seemed worried or alarmed that this amendment of the Senator from Alabama might cause State legislatures to have to enact complex legislation that they are not qualified, the Senator seemed to think, to do. I call the Senator's attention to the fact that in the statute, at the State level, all that would be required could be contained in not over two lines in a bill. All it would have to say is that the provisions of U.S. statute 94 dash, whatever the number, shall be applicable in the State of North Carolina or in the State of Alabama. I should like to disabuse the Senator's mind from worrying about the complex nature of this legislation that is going to have to be passed at the State level.

Mr. MORGAN. I say to the distinguished Senator from Alabama that his very simplistic statement did not disabuse my mind.

Mr. ALLEN. I hope it did not confuse the Senator, then.

Mr. MORGAN. I do not think it confused me, because these little two-word or three-word acts are sometimes the ones that get us into difficulty. I think that is the kind of legislation that has gotten Congress into difficulty, where they adopt very simplistic-sounding acts which have implications far beyond any that would be considered.

So I think even if it only required those three or four little words, certainly no legislature in this country would want to adopt it unless it understood the full meaning and implications of it. I am sure that every legislature in this country is qualified to comprehend and to enact this kind of legislation, provided they have the time and the expertise.

Mr. ALLEN. Yet the Senator is seeking to force this legislation on the States without giving them any right of input whatsoever.

Mr. MORGAN. They have input. I say to the distinguished Senator from Alabama. I represent the State of North Carolina and my 5 million people. I confer with my people. I bring here, I think,

as best I can, the understanding of the people of my State. That is why we are here, as representatives of the people of the State of North Carolina and of the State of Alabama. That is where the input is.

The difficulty is, I say to the Senator, suppose we adopt this law and only the State of North Carolina enacts it. Then we have a consortium of companies like those we alluded to earlier that are engaging in illegal acts in restraint of trade. If there is only one State to worry about, that is not very much of a deterrent. We can sue down in North Carolina, but the consumer up in Virginia, who is being damaged by a nationwide or worldwide conspiracy to restrain trade and fix prices, who has to pay inflated consumer prices, may not have any remedy.

This is the kind of legislation that I think needs to be enacted on a nationwide basis. I think the Senator from Alabama knows that I probably vote against as many pieces of legislation as any Member of the Senate on the grounds that this is a matter that ought to and can be handled by the States.

But you are dealing here with—what word do they use now—multinational corporations—I wanted to say nationwide—and multinational corporations, in effect, which are much larger than any one State.

Mr. ALLEN. Mr. President, will the Senator yield at that point?

Mr. MORGAN. Yes.

Mr. ALLEN. Since attorneys general would be authorized to bring these nationwide suits if this law is enacted by Congress and approved by the President, then would we see a foot race as between the 50 attorneys general throughout the Nation to enter suit against company X, company Y, company Z, company A, company B, copartnership A, copartnership B? Would all 50 State attorneys general make a beeline to the Federal courthouse in their district and file a suit against a company? Would there be 50 such suits against a company or would it be that the first attorney general who reached the courthouse, who ran the foot race the fastest would preempt the other attorneys general?

Would the Senator answer on that score?

Mr. MORGAN. I would say to my distinguished colleague if we had had attorneys general with that kind of enthusiasm and zeal for the last 25 years who were willing to go to court to right the wrongs of the people, a good portion of the time that this Senate has spent in all kinds of litigation, in civil rights litigation, would never have been necessary.

Mr. ALLEN. But the Senator still has not answered my question, and I hope he will.

Mr. MORGAN. I believe I have the floor. Will the Senator permit me to follow through?

Mr. ALLEN. Yes.

Mr. MORGAN. Unfortunately, Senator, I will say to the Senator from Alabama there are not that many attorneys general who have that kind of time.

Mr. ALLEN. Suppose we did have?

Mr. MORGAN. Well, suppose is a hy-

pothetical question which I do not foresee because I served as attorney general for 6 years. At one time I knew them all in North America, and I attended a meeting of the Southern attorneys general last week, and I hope next month to attend the national meeting because I still maintain an interest. There are not that many who are going to get that involved.

Mr. ALLEN. Well, that being the case, what is the use of forcing this added power on these people who do not have any time?

Mr. MORGAN. It makes it available to them, Senator. There is nothing in the world that compels them to file a lawsuit. As a matter of fact, if a State legislature thinks an attorney general is going beyond the bounds of reason, then all the legislature has to do is to take that power away from him.

Mr. ALLEN. I am glad to hear the Senator say that. That may be the next amendment that is offered. [Laughter.]

Mr. MORGAN. I will say to the Senator that, you know, attorneys general have a difficult position in government, as the Senator well knows. Quite often they are called upon to tell the Governor he can do something or he cannot do something.

Mr. ALLEN. The Senator still has not told the Senator from Alabama if each attorney general is going to have to be equipped with a stopwatch to indicate the time he got to the courthouse with his antitrust legislation to have the right to file this particular type of action.

Mr. MORGAN. Well, I do not believe the Senator is really serious in that kind of a question.

Mr. ALLEN. Who would have the priority, the one who got there first or the one who got there last?

Mr. MORGAN. It would depend, of course, on who got there first. But you are not going to have that many filing their actions.

Besides that, let me say to the Senator, I filed a suit in North Carolina and the attorney general, Don McLeod filed one in South Carolina, and Attorney General Andy Miller in Virginia, but they were all consolidated, and we had to go to Minneapolis to try them.

Does the Senator know why we had to go to Minneapolis to try them? It was because there were so many attorneys for all of these five or six drug companies, they had so much power that they thought they would run us to death and that 1 week we would be in the southern district of New York, the next week we would be sitting in Judge Lord's court in Minneapolis, and we would be in Miami, Fla., the next week.

So they would be consolidated.

Mr. ALLEN. Does the Senator favor a multiplicity of suits or would it not be better to have one coming out of the Justice Department?

Mr. MORGAN. If it were practical. Let me say this to the Senator: If it were practical I would rather have one coming out of the Justice Department. But the sad truth is, and I believe the Senator knows it, and these giant corporations that have been running around here all lobbying in my office and every other office know it, that the Justice Department, the antitrust division, lacks the resources and the political clout to bring

these lawsuits. They have two or three pending now, and that is about all they can handle.

Let me tell the Senator about a conversation I had one day. I went up to see, at the request of a Federal trial attorney in the U.S. Department of Justice who thought his boss was going to settle a suit out from under him, and he did not think it ought to be settled—I went and made an appointment with that assistant attorney general. I talked to him about how important I thought the case was not only to the Federal Government but to the States, and how important their expertise would be to us.

Afterwhile, the assistant U.S. attorney reared back, put his foot on his desk, and he said:

Senator, you have got to remember that 90 percent of all damages will eventually be paid by the taxpayers anyway, so why do you want to push them back to the wall.

I told my assistant it seemed to me that we have got the fox guarding the henhouse, and that we ought to go back to North Carolina and try our own case.

That is one. That does not represent the philosophy of all of the Antitrust Division of the Department of Justice, but I say when you have got the power dispersed among 50 attorneys general you are not as likely to run into that kind of situation.

Mr. ALLEN. Would each attorney general's suit apply just to his State or would it be nationwide?

Mr. MORGAN. It would, of course, be any company, but he can only recover for the people, for the constituents, in his State.

Mr. ALLEN. The Justice Department though can file as to the entire country, and why would you want 50 suits when one would do just as well?

Mr. MORGAN. But, you see, the point I believe the Senator from Alabama fails to comprehend is that the Department of Justice cannot recover damages for and on behalf of the people.

The second answer to that is if the Attorney General of North Carolina brings an action and it is successful and he recovers for his people, and the attorneys general for the other States do not want to recover for their own people—

Mr. ALLEN. The Justice Department is not allowed to claim treble damages in their suit?

Mr. MORGAN. It is my understanding they are only entitled to damages for the U.S. purchases.

Mr. ALLEN. I say, the Senator feels that the Justice Department cannot claim treble damages?

Mr. MORGAN. That is my understanding.

Mr. ALLEN. I believe the Senator is mistaken about that. That is the whole thrust of an antitrust action, that treble damages can be claimed.

Mr. MORGAN. Mr. President, I move to lay the amendment of the Senator from Alabama on the table.

Mr. ALLEN. I call for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. ALLEN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PERCY). Without objection, it is so ordered.

Mr. MORGAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the Allen amendment. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Idaho (Mr. CHURCH), the Senator from Missouri (Mr. EAGLETON), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Hawaii (Mr. INOUE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Wyoming (Mr. McGEE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), the Senator from California (Mr. TUNNEY), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MONDALE), the Senator from Rhode Island (Mr. PASTORE), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I also announce that the Senator from Alaska (Mr. GRAVEL) and the Senator from Montana (Mr. MANSFIELD) are absent on official business.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON), the Senator from Rhode Island (Mr. PASTORE), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Connecticut (Mr. RIBICOFF) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from New Jersey (Mr. CASE), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The result was announced—yeas 36, nays 38, as follows:

[Rollcall Vote No. 202 Leg.]

YEAS—36

| | | |
|-----------------|-----------------|-------------|
| Bayh | Hart, Philip A. | Muskie |
| Biden | Hartke | Nelson |
| Brooke | Haskell | Pell |
| Bumpers | Hatfield | Percy |
| Burdick | Hathaway | Proxmire |
| Byrd, Robert C. | Jackson | Schweiker |
| Clark | Javits | Scott, Hugh |
| Cranston | Leahy | Stafford |
| Culver | Long | Stevenson |
| Durkin | Mathias | Symington |
| Glenn | Morgan | Taft |
| Harl, Gary | Moss | Weicker |

NAYS—38

| | | |
|---------------|-----------|------------|
| Allen | Domenici | Metcalf |
| Baker | Eastland | Nunn |
| Bartlett | Fannin | Randolph |
| Beall | Ford | Roth |
| Bellmon | Garn | Scott |
| Bentsen | Griffin | William L. |
| Brock | Hansen | Sparkman |
| Buckley | Helms | Stone |
| Byrd | Hollings | Talmadge |
| Harry P., Jr. | Hruska | Thurmond |
| Cannon | Johnston | Tower |
| Chiles | Laxalt | Young |
| Curtis | McClellan | |
| Dole | McClure | |

NOT VOTING—26

| | | |
|------------|-----------|----------|
| Abourezak | Inouye | Packwood |
| Case | Kennedy | Pastore |
| Church | Magnuson | Pearson |
| Eagleton | Mansfield | Ribicoff |
| Fong | McGee | Stennis |
| Goldwater | McGovern | Stevens |
| Gravel | McIntyre | Tunney |
| Huddleston | Mondale | Williams |
| Humphrey | Montoya | |

So the motion to table the Allen amendment was rejected.

Mr. MORGAN. Mr. President, I sent to the desk an amendment to the amendment in the nature of a substitute of the Senator from Pennsylvania (Mr. HUGH SCOTT) and the Senator from Michigan (Mr. PHILIP A. HART), and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. WEICKER). The amendment will be stated. The legislative clerk read as follows:

On page 27, line 18, strike out "done anything forbidden in" and insert in lieu thereof "engaged in any activity deemed a *per se* offense, or arising out of the fraudulent procurement or enforcement of a patent, in violation of".

On page 32, strike out lines 12 through 18, and insert in lieu thereof the following: "This title shall apply to any cause of action accruing subsequent to the date of enactment of this title."

Mr. MORGAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. I ask unanimous consent that Jud Sommer of my staff may have the privilege of the floor during the debate on the antitrust measure.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MORGAN. Mr. President, I have sent forth an amendment which, as I understand it, would amend the Hart-Scott substitute bill.

Mr. President, the *parens patriae* provisions of the pending Hart-Scott substitute amendment authorize State attorneys general to recover damages for

violations of the Sherman Act on behalf of natural persons; that is, on behalf of consumers in their States only.

In general, Mr. President, I support this title, and I believe that it is a necessary and appropriate mechanism to prevent antitrust violators from retaining the fruits of their illegal acts and to provide recovery of damages broadly sustained among consumers.

This title of the substitute amendment will create a mechanism for collecting damages in cases in which many customers or many consumers have been damaged in a small amount.

The total loss to the consumers of a given State quite often is large, but the loss to individual ones is too small to permit thousands of lawsuits. And this is a fact I believe, Mr. President, that is generally known among the unscrupulous.

Mr. ROBERT C. BYRD. May we have order in the Senate?

The PRESIDING OFFICER (Mr. BELLMON). The Senate is not in order. The Senator will resume.

Mr. MORGAN. Mr. President, sometimes the damage to a consumer resulting from an antitrust violation is relatively small. It is too small for an individual consumer to litigate or to seek recovery or to have any kind of relief, but when we add the damage or the damages caused to the consumers of the entire State then the loss is rather large, and there ought to be some remedy for it.

I have seen cases in which I felt that this fact was so well understood by those who were engaged in acts of illegal restraint of trade or in price fixing that they were willing to take the risk because they knew it was impractical or impossible for an individual to bring a lawsuit for such a small amount.

But I must confess, Mr. President, that I am a little bit concerned about the breadth of the offenses, that is, when it says any violation of the Sherman Act for which treble damages can be recovered on behalf of consumers under title 4. Often a businessman may not know when his conduct is violating one or more provisions of the Sherman Act or one that is judged on a rule-of-reason basis. Similarly, some offenses are status offenses such as monopolization under section 2 which do not require predatory conduct as an element of the offense. On the other hand, I cannot support the effort to limit title 4 to willful price-fixing offenses.

Mr. BUMPERS. Mr. President, will the Senator yield for a question at that point?

Mr. MORGAN. I yield.

Mr. BUMPERS. One of the things that has troubled me about this bill is the method of recovery and what is going to happen to the proceeds of any recovery that the attorney general might be awarded. I was wondering whether or not the sponsors of the bill and floor managers will accept an amendment to provide as a discretionary remedy of the court a mandate that the offending company be ordered to sell the product for whatever time necessary at a reduced price to recovery so that all the con-

sumers in the State would recover the total amount of damages. To make a hypothetical case, let us assume that the allegations proved that a company charged to have fixed prices which inured to the disadvantage of the consumers to the extent of \$1 million. Now they are entitled to treble damages under the bill, so that would be \$3 million that that particular State was entitled to recover.

If that were, we will say, deodorant, hair spray, or toothpaste, as the distinguished Senator has appropriately pointed out, it would be folly to think of the State trying to parcel out damages of a few pennies to all the people who bought the particular toothpaste based on the claim they might file. So my question is: Would an appropriate remedy be to order the offending company to reduce the price of the product so many cents, we will say for toothpaste so many cents a tube, until the State has recovered that \$3 million, and would the sponsors and the floor managers consider accepting an amendment to so provide?

Mr. MORGAN. I say to the Senator that he raises a very real question that troubled those of us who brought such actions as attorney general as to what to do with the proceeds and his solution may be a very valid one, but I am not the floor manager of the bill, and my amendment at this time does not deal with that. But I will be glad to consult with the floor managers, come back with an answer, and discuss the matter with the Senator. Not being the floor manager and he being unable to be here, I do not believe that I should attempt to speak in his behalf, but I do recognize that the point that the Senator brought forward is a very valid point.

Mr. BUMPERS. If the Senator will yield, are we under any time restraint? I do not want to unnecessarily consume another Senator's time.

Mr. MORGAN. No. I yield for a question.

Mr. BUMPERS. I am not sure I am going to be here next week. That is the reason I want to get this off my chest now.

One other thing I have been concerned about is the possibility of being faced with a prospect of 50 different lawsuits. There are certain discretionary methods—I think of the Federal Rules of Civil Procedure now—by which a court can order consolidation of certain pretrial discovery work. But I was wondering whether or not it might not be feasible to provide in this bill that courts be strongly encouraged to order consolidation of discovery and pretrial techniques so that the specific business would not be subject to the same duplicitous cost and trouble in the 50 different States?

Mr. MORGAN. I say to the Senator, yes, it would be feasible to add such a provision. But I also add on the basis of my experience in the tetracycline case I do not think we need to encourage judges to do it because they consolidated us all over America and, actually, that is one of the reasons that makes it so difficult to try these cases, and that is why I think we need to pass some legislation that will give attorneys general some standing.

But I think the answer to it is, yes, they should be urged to consolidate.

We were meeting in Minneapolis and the next time we were meeting in New York, but it was a question of consolidating the cases and bringing them all together for trial.

Mr. BURDICK addressed the Chair.

Mr. BUMPERS. Will the Senator yield for a third question? Then I will be happy to yield to the Senator from North Dakota.

Mr. MORGAN. I yield.

Mr. BUMPERS. One other part of this bill which troubled me is, for example, in my State everything is appropriated on a line item basis. The attorney general's budget is based on a line item appropriation. This bill provides that, if the attorney general is found to have brought a spurious or specious lawsuit or one, indeed, brought in bad faith or certain other criteria set in the bill, the defendant is entitled to attorney fees. Those attorney fees in a case of some magnitude add up to several hundred thousand dollars. And in a State like mine, there is not any way for the attorney general to comply with this bill without the appropriation from the legislature and, if the legislature simply refused to do it, it occurs to me one or two things might happen. A company can file a claim with the Arkansas Claims Commission, for example. The claims commission might honor it or might not. They certainly would be under a mandate to honor the claim. And the second possibility is that the attorney general could be made personally liable in the absence of appropriation by the legislature. Would the Senator agree with that analysis?

Mr. MORGAN. Yes.

I say to the Senator that the Hart-Scott substitute would make it applicable only to cases of bad faith. However, the distinguished Senator from New York (Mr. BUCKLEY) has proposed an amendment which would make it applicable to all cases, which I think the distinguished Senator from Arkansas would want to oppose, as I would.

However, our proposal would only make it applicable to bad faith cases. I cannot conceive of a situation in which a court would order attorneys' fees paid in the absence of clear and convincing evidence of bad faith on the part of the attorney general.

I think this would serve also as a deterrent to those attorneys general about whom there seems some little fear that they might run off in every direction. I do not believe that to be true. But even if that is the tendency or if that feeling is well founded, I think the bad faith or good faith part would restrain it.

Mr. BUMPERS. Is this really a valid provision in the bill, since the attorney general cannot pay the attorney fees in the absence of a legislative appropriation?

Mr. MORGAN. I did not hear the Senator.

Mr. BUMPERS. I will repeat it.

I agree that it does serve as a deterrent, because no attorney general, from a purely political standpoint, is going to bring a case in bad faith. But, as a practical matter, is there any method

by which an attorney can get attorney's fees unless the legislature appropriates money? If they fail to do so or refuse to do so, as a practical matter, is not this provision really of no validity?

Mr. MORGAN. I would be inclined to agree, if the legislature did not appropriate the money, that there would be no way we could be paid.

Mr. BUMPERS. I thank the Senator.

Mr. BURDICK. Mr. President, will the Senator yield?

Mr. MORGAN. I yield.

Mr. BURDICK. I should like to answer one of the questions raised by the Senator from Arkansas about the method of assessing damages and paying the citizens of a State.

The entire section 4, in my opinion, is fraught with unconstitutionality, and I intend to speak at length on it tomorrow, citing chapter and verse.

The difficulty with the Senator's suggestion is that when the antitrust violations occur, there is one set of citizens in the State, one set of buyers or consumers, and at the time that the matter is settled and decided, there is an entirely different set of consumers who would be paid. In other words, the people harmed are not necessarily the people being paid.

Beyond that, the cases uniformly have held that where you have claim for damages based upon a fluid recovery, where you do not have an identified claimant, and you do not have an identified amount, that the assessment is unconstitutional. It has been suggested that the way to prevent unjust enrichment is through a penalty.

To answer the Senator's first question, the difficulty is that we would be rewarding people who were not damaged in the first place, and we run up against some legal problems.

Mr. MORGAN. Mr. President, whether a person is for this bill or not, I believe that my amendment would be acceptable and would be a good amendment, because it restricts to some degree the actions that can be brought. It restricts it to those actions that would be *per se* violations. *Per se* violations generally are defined as naked restraint of trade, with no purpose except that of stifling competition.

The second provision of the bill would keep it from being retroactive—that is, it would not apply to any actions that already may have occurred or may have accrued.

Mr. President, the *parens patriae* provisions of the pending Hart-Scott substitute amendment authorizes State attorneys general to recover damages for violations of the Sherman Act on behalf of natural persons—consumers—in their States.

In general, I support this title, and believe it is a necessary and appropriate mechanism to prevent antitrust violators from retaining the fruits of their illegal acts, and to provide recovery of damages broadly sustained among consumers.

This title of the substitute amendment will create a mechanism for collecting damages in cases in which many consumers have been damaged a small amount.

The total loss to consumers is large, but the loss to individual ones is too small to permit thousands of suits.

I am concerned, however, about the breadth of offenses—any violation of the Sherman Act—for which treble damages can be recovered on behalf of consumers under title IV. Often a businessman may not know when his conduct is violating one of the more esoteric provisions of the Sherman Act or one that is judged on a rule-of-reason basis. Similarly, some offenses are status offenses, such as monopolization under section 2, which do not require predatory conduct as an element of the offense.

On the other hand, I cannot support the effort to limit title IV to willful price-fixing offenses. Since 1890, section 1 of the Sherman Act has prohibited "every contract, combination or conspiracy in restraint of trade." No justification exists for singling out price fixing and permitting other equally pernicious and hard-core antitrust violations such as agreements to limit production, to divide up markets, to allocate customers, to engage in group boycotts, and similar illegal conduct—all of which are *per se* offenses of the Sherman Act and all of which have the same effect of illegally driving up prices to consumers just as if the price of a product has been fixed.

In *Northern Pacific Railway Company v. U.S.*, 356 U.S. 1, 5 (1958), the Supreme Court stated:

There are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. This principle of *per se* unreasonableness . . . makes the type of restraints which are proscribed by the Sherman Act more certain to the benefit of everyone concerned. . . .

In *U.S. v. Topco Associates*, 405 U.S. 596, 607-08 (1972), the Court stated:

It is only after considerable experience with certain business relationships that courts classify them as *per se* violations of the Sherman Act.

This Court has reiterated time and time again that [*per se* offenses] are naked restraints of trade with no purpose except stifling of competition.

Without the *per se* rules, businessmen would be left with little to aid them in predicting in any particular case what courts will find to be legal and illegal under The Sherman Act.

It seems to us that an appropriate middle position between both extremes is to limit the scope of Sherman Act offenses for which *parens patriae* actions can be filed to hard-core offenses such as *per se* violations and fraud on the Patent Office. I believe that such a provision will protect the consumer while at the same time protect honest businessmen against possible huge liability for inadvertent violations.

I also am concerned about the retroactive application of the liability imposed by title IV. Since title IV has both deterrent and compensatory purposes, I believe it fair for its provisions to apply prospectively only. In the context of prospective application to the most per-

nicious offenses, I support the retention of title IV's treble damage provision—a provision in the antitrust laws since their original enactment in 1890.

Accordingly, I have offered an amendment limiting title IV to per se offenses and fraud on the Patent Office and applying its provisions prospectively only. I have been advised that this amendment is acceptable to the managers of the bill, Mr. President, and I ask support for its moderating influence.

Mr. President, because it is a rather simple amendment and a restricting amendment, I believe it is one that can be voted for by all those who favor the bill as well as those who oppose it. Therefore, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. A request is pending for the yeas and nays.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Does the Senator from Alabama wish to renew his request for a quorum call?

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MORGAN. Mr. President, I ask unanimous consent that there be a 10 minute rollcall vote.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. HRUSKA. Mr. President, I express support and sympathy for the approval of the amendment offered by the distinguished Senator from North Carolina.

Both parts of the amendment will represent an improvement. I think the second part particularly is commendable, because it will make the act prospective in nature, and it will be only fair to those who have functioned under one order of things not to be visited with a subsequently passed act of this nature and of this degree and intensity.

So I support the amendment and shall vote for it.

Mr. MATHIAS. Mr. President, I rise to join my distinguished colleague from North Carolina (Mr. MORGAN), in proposing the amendment which would limit the parens patriae provisions in title IV of the Hart-Scott substitute to per se violations and fraud on the Patent Office.

I am convinced that this amendment is an appropriate compromise between the House version of title IV which limits these actions to willful price-fixing and the present version of the Hart-Scott substitute bill. I have been advised that this amendment is acceptable to the managers of the bill; and it is my hope that it will be accepted by my colleagues.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina. On

this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.
Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Texas (Mr. BENTSEN), the Senator from Idaho (Mr. CHURCH), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Hawaii (Mr. INOUE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Wyoming (Mr. MCGEE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTROYA), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), the Senator from California (Mr. TUNNEY), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I also announce that the Senator from Alaska (Mr. GRAVEL) and the Senator from Montana (Mr. MANSFIELD) are officially absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), and the Senator from Connecticut (Mr. RIBICOFF) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from New Jersey (Mr. CASE), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), the Senator from Virginia (Mr. SCOTT), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The result was announced—yeas 72, nays 0, as follows:

[Rollcall Vote No. 203 Leg.]

YEAS—72

| | | |
|-----------------|-----------------|-------------|
| Allen | Ford | Metcalf |
| Baker | Garn | Morgan |
| Bartlett | Glenn | Moss |
| Bayh | Griffin | Muskie |
| Beall | Hansen | Nelson |
| Bellmon | Hart, Gary | Nunn |
| Biden | Hart, Philip A. | Percy |
| Brock | Hartke | Proxmire |
| Brooke | Haskell | Randolph |
| Buckley | Hatfield | Roth |
| Bumpers | Hathaway | Schweiker |
| Burdick | Helms | Scott, Hugh |
| Byrd | Hollings | Sparkman |
| Harry F., Jr. | Hruska | Stafford |
| Byrd, Robert C. | Jackson | Stevenson |
| Cannon | Javits | Stone |
| Chiles | Johnston | Symington |
| Clark | Laxalt | Taft |
| Cranston | Leahy | Talmadge |
| Culver | Long | Thurmond |
| Curtis | Magnuson | Tower |
| Dole | Mathias | Weicker |
| Domenici | McClellan | Young |
| Durkin | McClure | |
| Fannin | McGovern | |

NAYS—0

NOT VOTING—28

| | | |
|------------|-----------|------------|
| Abourezk | Humphrey | Pearson |
| Bentsen | Inouye | Pell |
| Case | Kennedy | Ribicoff |
| Church | Mansfield | Scott |
| Eagleton | McGee | William L. |
| Eastland | McIntyre | Stennis |
| Fong | Mondale | Stevens |
| Goldwater | Montoya | Tunney |
| Gravel | Packwood | Williams |
| Huddleston | Pastore | |

So Mr. MORGAN's amendment was agreed to.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MORGAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MORGAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. I ask for a vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama.

Mr. ALLEN. Have the yeas and nays been ordered?

Mr. FORD. Mr. President, I suggest the absence of a quorum.

Mr. ALLEN. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

The absence of a quorum has been suggested, and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The question is on agreeing to the amendment of the Senator from Alabama.

The yeas and nays have been ordered, and the clerk will call the roll.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. ROBERT C. BYRD. Mr. President, I object.

The PRESIDING OFFICER (Mr. GARY HART). Objection is heard. The clerk will continue calling the roll.

The second assistant legislative clerk resumed the call of the roll.

Mr. MORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON. Mr. President, will the Senator yield for a unanimous-consent request without losing his right to the floor?

Mr. President, I ask unanimous consent that Mr. Ira Shapiro, a member of my staff, be permitted the privileges of the floor during the consideration of this legislation and vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRANSTON. Mr. President, I ask unanimous consent that Jon Fleming, of

my staff, be accorded the privilege of the floor during the consideration and vote on this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MORGAN. Mr. President, I send an amendment in the nature of a substitute for the Allen substitute to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. MORGAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Amendment proposed by Mr. MORGAN (for himself, Mr. Philip A. Hart, and Mr. Hugh Scott) to the Allen amendment in the nature of a substitute:

Strike out all after the enacting clause and insert the following:

SHORT TITLE

SEC. 101. This Act may be cited as the "Hart-Scott Antitrust Improvements Act of 1976".

TITLE I—DECLARATION OF POLICY

SEC. 102. (a) It is the purpose of the Congress in this Act to support and invigorate effective and expeditious enforcement of the antitrust laws, to improve and modernize antitrust investigation and enforcement mechanisms, to facilitate the restoration and maintenance of competition in the marketplace, and to prevent and eliminate monopoly and oligopoly power in the economy.

(b) The Congress finds and declares that—

(1) this Nation is founded upon and committed to a private enterprise system and a free market economy, in the belief that competition spurs innovation, promotes productivity, prevents the undue concentration of economic, social, and political power, and preserves a free, democratic society;

(2) the decline of competition in the economy could contribute to unemployment, inefficiency, underutilization of economic capacity, a reduction in exports, and an adverse effect on the balance of payments;

(3) diminished competition and increased concentration in the marketplace have been important factors in the ineffectiveness of monetary and fiscal policies in reducing the high rates of inflation and unemployment;

(4) investigations by the Federal Trade Commission, the Department of Justice, and the National Commission on Food Marketing, as well as other independent studies, have identified conditions of excessive concentration and anticompetitive behavior in various industries; and

(5) vigorous and effective enforcement of the antitrust laws, and reduction of anticompetitive practices in the economy, can contribute to reducing prices, unemployment, and inflation, and to preservation of our democratic institutions and personal freedoms.

TITLE II—ANTITRUST CIVIL PROCESS ACT AMENDMENTS

SEC. 201. The Antitrust Civil Process Act (76 Stat. 548; 15 U.S.C. 1311) is amended as follows:

(a) Subsection (a) of section 2 is amended by inserting "and" after the semicolon at the end of subparagraph (1), by striking subparagraph (2) thereof, and by renumbering subparagraph (3) and striking therefrom "(A)" after the words "with respect to," substituting a semicolon for the comma after the words "trade or commerce" and striking the remainder of the subparagraph.

(b) Subsection (c) of section 2 is amended to read as follows:

"(c) The term 'antitrust investigation' means any inquiry conducted by any antitrust investigator for the purpose of ascertaining whether any person is or has been engaged in any antitrust violation or in any activities preparatory to a merger, acquisition, joint venture, or similar transaction, which may lead to any antitrust violation;"

(c) Subsection (f) of section 2 is amended by striking out the words "not a natural person", by inserting immediately after the word "means" the words "any natural person or", and by inserting immediately after the word "entity" the words "including any natural person or entity acting under color or authority of State law;"

(d) Subsection (h) of section 2 is amended by striking out the words "antitrust document".

(e) Subsection (a) of section 3 is amended to read as follows:

"(a) Whenever the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to a civil antitrust investigation or to competition in a Federal administrative or regulatory agency proceeding, he may, prior to the institution of a civil or criminal proceeding thereon or during the pendency of an agency proceeding, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, or to answer in writing written interrogatories concerning such information, or to give oral testimony concerning such information, or to furnish any combination thereof."

(f) Subsection (b) of section 3 is amended to read as follows:

"(b) Each such demand shall—
"(1) state the nature of the investigation and the provision of law applicable thereto or the Federal administrative or regulatory agency proceeding involved; and

"(2) (A) if it is a demand for production of documentary material—

"(i) describe the class or classes of documentary material to be produced thereunder, with such definiteness and certainty as to permit such material to be fairly identified; and

"(ii) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

"(iii) identify the custodian to whom such material shall be made available; or

"(B) if it is a demand for answers to written interrogatories—

"(i) propound with definiteness and certainty the written interrogatories to be answered; and

"(ii) prescribe a date or dates at which time answers to the written interrogatories shall be made; and

"(iii) identify the custodian to whom such answers shall be made; or

"(C) if it is a demand for the giving of oral testimony—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced; and

"(ii) identify the antitrust investigator or investigators who shall conduct the examination, and the custodian to whom the transcript of such examination shall be given."

(g) Subsection (c) of section 3 is amended to read as follows:

"(c) Such demand shall—

"(1) not require the production of any information that would be privileged from disclosure if demanded by, or pursuant to,

a subpoena issued by a court of the United States in aid of a grand jury investigation; and

"(2) (A) if it is a demand for production of documentary material, not contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation; or

"(B) if it is a demand for answers to written interrogatories, not impose an undue or oppressive burden on the person required to furnish answers."

(h) Subsection (f) of section 3 is redesignated subsection (h) and the following new subsections are inserted immediately following subsection (e):

"(f) Service of any demand or of any petition filed under section 5 of this Act may be made upon any natural person by—

"(1) delivering a duly executed copy thereof to the person to be served; or

"(2) depositing such copy in the United States mails, by registered or certified mail duly addressed to such person at his residence or principal office or place of business.

"(g) Service of any such demand or of any petition filed under section 5 of this Act may be made upon any person who, in the opinion of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, is not to be found within the territorial jurisdiction of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. If such person has had contacts with the United States that were sufficient to, or if the conduct of such person has so affected the trade and commerce of the United States as to, permit the courts of the United States to assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this Act by such person that it would have if such person were personally within the jurisdiction of such court."

(1) Section 3 is further amended by inserting the following new subsections immediately after subsection (h), as redesignated:

"(i) The production of documentary material in response to a demand for production thereof shall be made under a certificate, in such form as the demand designates, sworn to by the person, if a natural person, to whom the demand is directed or, if the person to which the demand is directed is not a natural person, by a person or persons having knowledge of the facts and circumstances relating to such production, to the effect that all documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

"(j) Each interrogatory in a demand served pursuant to this section shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer, and the answers shall be submitted under a certificate, in such form as the demand designates, sworn to by the person, if a natural person, to whom the demand is directed, or if the person to which the demand is directed is not a natural person, by a person or persons responsible for the answers, to the effect that all information required by the demand and in the possession, custody, or control of the person to whom the demand is directed, or within the knowledge of such person, has been furnished.

"(k) (1) The examination of any person pursuant to a demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths

and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit the transcript of the testimony to the possession of the custodian. The antitrust investigator or investigators conducting the examination shall exclude from the place where the examination is held all persons other than the person being examined, his counsel, the officer before whom the testimony is to be taken, and any stenographer taking said testimony. The provisions of the Act of March 3, 1913 (Ch. 114, 37 Stat. 731; 15 U.S.C. 30) shall not apply to such examinations.

"(2) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts personal business, or in such other place as may be agreed upon between the antitrust investigator or investigators conducting the examination and such person.

"(3) When the testimony is fully transcribed, the witness shall be afforded an opportunity to examine the transcript, in the presence of the officer, for errors in transcription. Any corrections of transcription errors which the witness desires to make shall be entered and identified upon the transcript by the officer, with a statement of the reasons given by the witness for making them. The witness also may clarify or complete answers otherwise equivocal or incomplete on the record, which shall be entered and identified upon the transcript by the officer, with a statement of the reasons given by the witness for making them. The transcript shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the transcript is not signed by the witness within thirty days of his being afforded an opportunity to examine it, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign, together with the reason, if any, given therefor. The officer shall certify on the transcript that the witness was duly sworn by him and that the transcript is a true record of the testimony given by the witness and promptly send it by registered or certified mail to the custodian. Upon payment of reasonable charges therefor, the witness shall be permitted to inspect and copy the transcript of his testimony to the extent and in the circumstances that he would be entitled to do so if it were a transcript of his testimony before a grand jury; and there may be imposed on such inspection and copying such conditions as the interests of justice require.

"(4) Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied by counsel. Such person or counsel may object on the record, briefly stating the reason therefor, whenever it is claimed that such person is entitled to refuse to answer any question on grounds of privilege or other lawful grounds; but he shall not otherwise interrupt the examination. If such person refuses to answer any question on the grounds of privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18, United States Code. If such person refuses to answer any question, the antitrust investigator or investigators conducting the examination may request the judicial court of the United States for the judicial district within which the examination is

conducted to order such person to answer, in the same manner as if such person had refused to answer such question after having been subpoenaed to testify thereto before a grand jury, and upon disobedience to any such order of such court, such court may punish such person for contempt thereof.

"(5) Any person examined pursuant to a demand under this section shall be entitled to the same fees and mileage that are paid to witnesses in the courts of the United States. The court shall award any person, not the subject of an antitrust investigation (or an officer, director, employee or agent thereof), who shall respond to, or be examined pursuant to a demand under this section, reasonable expenses incurred by him in preparing and producing documentary material or in appearing for examination, including reasonable attorneys' fees. A determination made pursuant to this paragraph (5) shall be made subsequent to compliance by such person with such demand."

(j) Subsection (a) of section 4 is amended by striking the words "antitrust document", and by inserting immediately after the word "custodian" the words "of documentary material demanded, answers to written interrogatories served, or transcripts of oral testimony taken, pursuant to this Act".

(k) Subsection (b) of section 4 is amended by inserting in the first sentence immediately after the word "demand", first appearance, the words "for the production of documents", and by amending the second sentence to read as follows: "Such person may upon written agreement between such person and the custodian substitute true copies for originals of all or any part of such material."

(l) Subsection (c) of section 4 is amended by inserting in the first sentence immediately after the word "any" the word "such", by inserting in the first sentence immediately after the word "material" the words ", answers to interrogatories, or transcripts of oral testimony", by inserting in the second sentence immediately after the word "material" the words ", answers to interrogatories, or transcripts of oral testimony", by inserting in the third sentence immediately after the word "material", in both places where it appears, the words "or information", by inserting in the fourth sentence immediately before the word "documentary" the word "such", and by adding after the fourth sentence the following new sentence: "Such documentary material and answers to interrogatories may be used in connection with any oral testimony taken pursuant to this Act."

(m) Subsection (d) of section 4 is amended to read as follows:

"(d) (1) Whenever any attorney of the Antitrust Division of the Department of Justice has been designated to appear before any court, grand jury, or Federal administrative or regulatory agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to such attorney such documentary material, answers to interrogatories, or transcripts of oral testimony for use in connection with any such case, grand jury, or proceeding as such attorney determines to be required. Upon the completion of any such case, grand jury, or proceeding such attorney shall return to the custodian any such materials so delivered that have not passed into the control of such court, grand jury, or agency through the introduction thereof into the record of such case or proceeding.

"(2) The custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony shall deliver to the Federal Trade Commission, in response to a written request, copies of such documentary material, answers to interrogatories, or transcripts of oral testimony for use in connection with any investigation or proceeding under its jurisdiction unless the Assistant Attorney General in charge of the Antitrust Division determines that it would not be in the

public interest to provide such material to the Commission. Upon the completion of any such investigation or proceeding, the Commission shall return to the custodian any such materials so delivered that have not been introduced into the record of such case or proceeding before the Commission. While such materials are in the possession of the Commission, it shall be subject to any and all restrictions and obligations which this Act places upon the custodian of such materials while in the possession of the Antitrust Division of the Department of Justice."

(n) Subsection (e) of section 4 is amended to read as follows:

"(e) Upon the completion of—

"(1) the antitrust investigation for which any documentary material was produced pursuant to this Act; and

"(2) any such case or proceeding,

the custodian shall return to the person who produced such material all such material (other than copies thereof furnished to the custodian pursuant to subsection (b) of this section or made by the Department of Justice pursuant to subsection (c) of this section) which has not passed into the control of any court, grand jury, or Federal administrative or regulatory agency through the introduction thereof into the record of such case or proceeding."

(o) Subsection (f) of section 4 is amended to read as follows:

"(f) When any documentary material has been produced by any person pursuant to this Act, and no case or proceeding as to which the documents are usable has been instituted and is pending or has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General or upon the Assistant Attorney General in charge of the Antitrust Division, to the return of all such documentary material (other than copies thereof furnished to the custodian pursuant to subsection (b) of this section or made by the Department of Justice pursuant to subsection (c) of this section) so produced by such person."

"(g) In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material produced, answers to written interrogatories served, or transcripts of oral testimony taken, under any demand issued pursuant to this Act, or the official relief of such custodian from responsibility for the custody and control of such material, the Assistant Attorney General in charge of the Antitrust Division shall promptly (1) designate another antitrust investigator to serve as custodian of such documentary material, answers to interrogatories, or transcripts of oral testimony, and (2) transmit in writing to the person who submitted the documentary material notice as to the identity and address of the successor so designated. Any successor designated under this subsection shall have with regard to such materials all duties and responsibilities imposed by this Act upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation."

(q) Subsection (a) of section 5 is amended by striking out all the words following the word "Act", and by striking out the comma after the word "Act" and inserting in lieu thereof a period.

(r) The first sentence of subsection (b) of section 5 is amended to read as follows:

"(b) Within twenty days after the service of any such demand upon any person, or at any time before the compliance date specified in the demand, whichever period is shorter, or within such period exceeding twenty days after service or in excess of such compliance date as may be prescribed in writing, subsequent to service, by the

antitrust investigator or investigators named in the demand, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the antitrust investigator or investigators named in the demand a petition for an order of such court modifying or setting aside such demand."

(s) The second sentence of subsection (b) of section 5 is amended by striking out the final period and inserting a colon in lieu thereof, and by inserting immediately after the colon the words: "Provided, That such person shall promptly comply with such portions of the demand not sought to be modified or set aside."

(t) Subsection (b) of section 5 is amended by inserting the following sentence at the end thereof: "Any such ground not specified in such a petition shall be deemed waived unless good cause is shown for the failure to assert it in such a petition."

(u) Subsection (c) of section 5 is amended by striking out the word "delivered", and by inserting immediately after the word "material" the words "or answers to interrogatories delivered, or transcripts of oral testimony given".

(v) The third paragraph of section 1505 of title 18, United States Code, is amended by inserting between the words "any" and "documentary" the words "oral or written information or any", and by inserting between the third and fourth paragraphs the following:

"Whoever knowingly and willfully withholds, falsifies, or misrepresents, or by any trick, fraud, scheme, or device conceals or covers up, a material part of any oral or written information or documentary material which is the subject of a demand pursuant to the Antitrust Civil Process Act, or attempts to or solicits another to do so; or".

SEC. 202. Section 5 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 16), is amended by adding at the end thereof the following new subsections:

"(j) A plea of nolo contendere in a criminal proceeding under the antitrust laws shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

"(k) The Attorney General, unless he determines it would be contrary to the public interest, shall upon written request from the Federal Trade Commission, after completion of any civil or criminal proceeding instituted by the United States and arising out of any grand jury proceeding or after the termination of any grand jury proceeding which does not result in the institution of such a proceeding, permit the Commission to inspect and copy any documentary material produced in and the transcripts of such grand jury proceeding. While such materials are in the possession of the Commission, the Commission shall be subject to any and all restrictions and obligations placed upon the Attorney General with respect to the secrecy of such materials.

"(l) Any person that institutes a civil action under this Act may, upon payment of reasonable charges therefor and after completion of any civil or criminal proceeding instituted by the United States and arising out of any grand jury proceeding, inspect and copy any documentary material produced in and the transcript of such grand jury proceeding concerning the subject matter of such person's civil action. Any action or proceeding to compel the grant of access under this subsection shall be brought in the United States district court for the district in which the grand jury proceeding occurred. The court may impose conditions upon the grant of access and protective orders that are required by the interests of justice."

SEC. 203. The provisions of this title shall be effective on the date of enactment of this Act, and the provisions providing for the production of documents or information may be employed in respect of acts, practices, and conduct that occurred prior to the date of enactment thereof.

TITLE III—MISCELLANEOUS AMENDMENTS

AFFECTING COMMERCE

SEC. 301. (a) Sections 2 and 3 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes", approved October 15, 1914 (15 U.S.C. 13 and 14) and section 3 of the Act entitled "An Act to amend section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U.S.C., title 15, sec. 13), and for other purposes", approved June 19, 1936 (15 U.S.C. 13a), are amended by striking out the words "in commerce" wherever the term appears and inserting in lieu thereof the words "in or affecting commerce".

(b) Section 7 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 18), is amended by striking out in the first sentence thereof the words "engaged in commerce" and "engaged also in commerce"; by striking out in the second sentence thereof the words "engaged in commerce"; by inserting in the first sentence thereof after the word "corporation", third appearance, the words ", where the activities of either corporation are in or affect commerce and"; by inserting in the first sentence thereof a comma between the words "where" and "in"; by inserting in the second sentence thereof after the word "corporations" the words ", where the activities of either corporation are in or affect commerce and"; and by inserting in the second sentence thereof a comma between the words "where" and "in".

(c) Section 6 of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 6), as amended, is amended by striking the words "and being in the course of transportation from one State to another, or to a foreign country", and inserting in lieu thereof the words "and being in or affecting commerce among the several States, or with foreign nations".

COMPLEX CASES

SEC. 302. The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12), is amended by adding at the end thereof the following new section:

"SEC. 27. (a) In any civil action brought in any district court of the United States under the antitrust laws, or any other Acts having like purpose that have been or hereafter may be enacted, the chief judge of the district court or the trial judge assigned to hear and determine the case—

"(1) may, upon application of either party to the proceeding, or upon his own motion, designate the case as a complex antitrust case; and

"(2) shall, upon the filing of a certificate by the Attorney General that, in his opinion, the case is a complex antitrust case, designate the case as a complex antitrust case. It shall be the duty of the chief judge, and the trial judge designated to hear and determine any case designated as a complex antitrust case, to set the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. Special masters, economic experts, and other personnel may be appointed to assist in the expeditious and efficient trial of the case, and in expediting discovery and pretrial matters.

"(b) Such special masters, economic experts, and other personnel as may be appointed to assist in the expeditious and efficient trial of the case, and in expediting discovery and pretrial matters, also may serve as expert witnesses. They may be used by the court in all phases of the trial, including the preparation and analysis of plans for relief. They (1) may be furnished with all evidence introduced by any party; (2) may provide additional evidence subject to objection by any party; (3) may provide an analysis of issues with particular reference to proposed orders to restore effective competition; (4) may recommend provisions for proposed orders to restore effective competition; and (5) shall be subject to cross-examination and rebuttal.

"(c) In any case designated as a complex antitrust case, the provisions of section 604 of title 28, United States Code, providing for the payment of expenses and compensation shall apply in order to provide compensation to such master, expert, or other personnel that may be appointed."

FOREIGN ACTIONS

SEC. 303. The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12), is amended by adding at the end thereof the following new section:

"SEC. 28. In any civil action or proceeding before any court of the United States, involving any Act to regulate interstate or foreign trade or commerce, or to protect the same against unlawful restraints or monopolies, in which the court orders any party (or any officer, director, employee, agent, subsidiary, or parent thereof within the jurisdiction of the court) to furnish discovery, evidence, or testimony in the custody, possession, or control of such party (or officer, director, employee, agent, subsidiary, or parent thereof) and such party (or officer, director, employee, agent, subsidiary, or parent thereof) refuses, declines, or fails to do so on the ground that a foreign statute, order, regulation, decree, or other law prohibits compliance by such party (or officer, director, employee, agent, subsidiary, or parent thereof) with such order, the court may enter an order against such party dismissing all or some of such party's claims, striking all or some of such party's defenses, or otherwise terminating the proceeding or any portion thereof adversely as to such party: *Provided*, That where in any such action or proceeding the court orders any party to furnish discovery, evidence, or testimony in the custody, possession, or control of any officer, director, employee, agent, subsidiary, or parent of such party not subject to the jurisdiction of such court, and such party refuses, declines, or fails to do so on the ground that a foreign statute, order, regulation, decree, or other law prohibits compliance by such person or entity with such order, the court shall order such party to make a good faith effort to secure a waiver from such law. If the court determines that such effort has been made and a waiver is not secured, it shall not on the basis of such refusal, declination, or failure enter an order against such party dismissing all or some of such party's claims, striking all or some of such party's defenses, or otherwise terminating the proceeding or any portion thereof adversely as to such party."

ATTORNEYS' FEES

SEC. 304. Section 16 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 16, 1914 (15 U.S.C. 26), is amended by adding at the end thereof the following new sentence: "In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including reasonable attorneys' fees and other expenses of the litigation."

SEVERABILITY

SEC. 305. If any provision of this Act, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

EFFECTIVE DATE

SEC. 306. (a) Section 301 of this title shall apply to acts, practices, and conduct occurring after the date of enactment of this Act.

(b) Section 302 of this title shall apply to all actions on file on the date of enactment of this Act or hereafter filed.

(c) Section 303 of this title shall apply to all actions on file on the date of enactment of this Act or hereafter filed, in respect of noncompliance with discovery orders hereafter entered. Nothing contained in this subsection shall be deemed to limit the authority of any court to reenter any discovery order heretofore entered, and thereby make such section 303 applicable thereto.

(d) Unless otherwise specified, the effective date of this Act shall be the date of enactment thereof.

TITLE IV—PARENS PATRIAE AMENDMENTS

SEC. 401. The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat. 730; 15 U.S.C. 12), is amended by inserting immediately following section 4B the following new sections:

"Sec. 4C. (a) (1) Any attorney general of a State may bring a civil action, in the name of such State in any district court of the United States having jurisdiction of the defendant, to secure monetary and other relief as provided in this section in respect of any damage sustained, by reason of the defendant's having engaged in any activity deemed a per se offense or arising out of the fraudulent procurement or enforcement of a patent in violation of the Sherman Act, by the natural persons residing in such State, or any of them: *Provided*, That no monetary relief shall be awarded in respect of such damage that duplicates any monetary relief that has been awarded or is properly allocable to (i) such natural persons who have excluded their claims pursuant to subsection (b) (2) of this section, and (ii) any business entity.

"(2) The court shall award the State as monetary relief threefold the total damage sustained as described in subsection (a) (1) of this section; such other relief as is just in the circumstances to prevent or remedy the violation of the Sherman Act; and the cost of suit, including a reasonable attorney's fee and other expenses of the litigation.

"(b) (1) In any action brought under subsection (a) (1) of this section, the State attorney general shall, at such times, in such manner and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice by publication only would be manifestly unjust as to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

"(2) Any person may elect to exclude from adjudication in an action brought under subsection (a) (1) of this section the portion of the State claim for monetary relief attributable to him. He shall do so by filing a notice of such election with the court within such time as specified in the notice prescribed pursuant to subsection (b) (1) of this section.

"(3) The final judgment in the action brought by the State shall be res judicata as to any claim under section 4 of this Act by any person in respect of damage to whom

such action was brought unless such person has filed the notice prescribed in subsection (b) (2) of this section.

"(c) (1) In any action brought under subsection (a) (1) of this section, and in any class action on behalf of natural persons under section 4 of this Act, damages may be proved and assessed in the aggregate on the basis of statistical or sampling methods, or such other reasonable method of estimation as the court in its discretion may permit, without separately proving the fact or amount of individual injury or damage to such natural persons.

"(2) In any action brought under subsection (a) (1) of this section, the court shall distribute, or direct the distribution of, any monetary relief awarded to the State either in accordance with State law or as the district court may in its discretion authorize. In either case, any distribution procedure adopted shall afford each person in respect of damage to whom the relief was awarded a reasonable opportunity to secure his appropriate portion of the net monetary relief.

"(d) An action brought under this section shall not be dismissed or compromised without approval of the court after providing such notice to persons affected thereby as the court shall direct in the interests of justice.

"(e) In any action brought under this section, the amount of plaintiffs' attorneys' fees, if any, shall be determined by the court.

"(f) In any action brought under this section, the court may in its discretion award reasonable attorneys' fees to a prevailing defendant upon a finding that the State attorney general acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

"SEC. 4D. Whenever the Attorney General of the United States has brought an action under the antitrust laws, and he has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws, he shall promptly give written notification thereof to such State attorney general.

"SEC. 4E. (a) In any action under section 4 or 4C of this Act, the State or any other plaintiff shall be entitled to recover treble damages in respect to the full amount of overcharges incurred or other monetary damages sustained in connection with expenditures under a federally funded program, notwithstanding the fact that the United States funded portions of the amounts claimed.

"(b) The Attorney General of the United States shall have the right to intervene in any such action to protect the interests of the United States.

"(c) Out of any damages recovered pursuant to this section, the United States shall be entitled to the portion of the overcharges or other monetary damages, untaxed, that it sustained or funded. Whenever another Federal statute or law provides a specified method of settlement of accounts between the State and Federal governments, in respect of such recovery, such method shall be used. Otherwise, the court before which the action is pending shall determine the method.

"(d) In the event of multiple actions in respect of the same alleged overcharges or other damages relating to a federally funded program, the defendant shall not be assessed, in total, more than threefold such damages.

"SEC. 4F. For the purposes of sections 4C, 4D, and 4E of this Act:

"(1) The term 'State attorney general' means the chief legal officer of a State, or any other person authorized by State law to bring actions under section 4C of this Act, and shall include the Corporation Counsel of the District of Columbia.

"(2) The term 'State' means a State of the United States, the District of Columbia, the

Commonwealth of Puerto Rico, and any other territory or possession of the United States.

"(3) The term 'Sherman Act' means the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890 (15 U.S.C. 1), as amended or as may be hereafter amended."

SEC. 402. Section 4B of such Act is amended by striking out the words "sections 4 or 4A" and inserting in lieu thereof the words "sections 4, 4A, or 4C".

SEC. 403. Section 5(1) of such Act is amended by striking out the words "private right of action" and inserting in lieu thereof the words "private or State right of action"; and by striking out the words "section 4" and inserting in lieu thereof the words "sections 4 or 4C".

SEC. 404. If any provision of this title, or the application of any such provision to any person or circumstance, is held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected by such holding.

SEC. 405. This title shall apply to all civil actions filed under the antitrust laws in which the cause of action accrued before the date of enactment of this title, but shall not apply to any civil action alleging a violation previously alleged in any civil action filed on behalf of a class of consumers.

TITLE V—PREMERGER NOTIFICATION AND STAY AMENDMENTS

SEC. 501. The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat. 730; 15 U.S.C. 12), is amended by adding a new section 7A to read as follows:

"SEC. 7A. (a) Notwithstanding any other provision of law, except as exempted pursuant to subsection (b) (4) of this section, until expiration of the notification and waiting period specified in subsection (b) (1) of this section, no person or persons shall acquire, directly or indirectly, the whole or any part of the stock or other share capital or of the assets of another person or persons, if the acquiring person or persons, or the person or persons the stock or assets of which are being acquired, or both, are engaged in commerce or in any activity affecting commerce, and—

"(1) stock or assets of a manufacturing company with annual net sales or total assets of \$10,000,000 or more is or are being acquired by a person or persons with total assets or annual net sales of \$100,000,000 or more; or

"(2) stock or assets of a nonmanufacturing company with total assets of \$10,000,000 or more is or are being acquired by a person or persons with total assets or annual net sales of \$100,000,000 or more; or

"(3) stocks or assets of a person or persons with annual net sales or total assets of \$100,000,000 or more is or are being acquired by a person or persons with total assets or annual net sales of \$10,000,000 or more.

"(b) (1) The notification and waiting period required by this section shall expire thirty days after the persons subject to subsection (a) of this section each file with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter referred to in this section as the 'Assistant Attorney General') duplicate originals of the notification specified in paragraph (3) of this subsection, or until expiration of any extension of such period pursuant to subsection (c) (2) of this section, whichever is later, except as the Federal Trade Commission and the Assistant Attorney General may otherwise authorize pursuant to subsection (c) (4) of this section.

"(2) Notwithstanding any other provision of law or the applicability of subsection (a)

of this section, except as exempted pursuant to subsection (b) (4) of this section, no person or persons shall acquire, directly or indirectly, the whole or any part of the stock or other share capital or of the assets of another person or persons, if—

(A) the acquiring person or persons, or the person or persons the stock or assets of which are being acquired, or both, are engaged in commerce or in any activity affecting commerce; and

(B) the Federal Trade Commission, with the concurrence of the Assistant Attorney General, by general regulation requires, after notice and submission of views, pursuant to section 553 of title 5, United States Code, that such person or persons, or any class or category thereof, shall not do so until the expiration of thirty days following the filing of a notification (specified pursuant to paragraph (3) of this section), or until the Federal Trade Commission and the Assistant Attorney General may otherwise authorize pursuant to subsection (c) (4) of this section, whichever occurs first.

(3) (A) The notification required by this section shall be in such form and contain such information and documentary material as the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall by general regulation prescribe, after notice and submission of views, pursuant to section 553 of title 5, United States Code.

(B) The fact of the filing of the notification required by this section and all information and documentary material contained therein shall be considered confidential under section 1905, title 18, United States Code, until the fact of such filing or of the proposed merger or acquisition is public knowledge, at which time such notification, information, and documentary material shall be subject to the provisions of section 552(b), title 5, United States Code. Nothing in this section is intended to prevent disclosure to any duly authorized committee or subcommittee of the Congress, to other officers or employees concerned with carrying out this section or in connection with any proceeding under this section.

(4) (A) The Federal Trade Commission, with the concurrence of the Assistant Attorney General, is authorized and directed to define the terms used in this section, to prescribe the content and form of reports, by general regulation to except classes of persons and transactions from the notification requirements thereunder, and to promulgate rules of general or special applicability as may be necessary or proper to the administration of this section, insofar as such action is not inconsistent with the purposes of this section, after notice and submission of views, pursuant to section 553 of title 5, United States Code.

(B) The following classes of transactions are exempt from the notification requirements of this section:

(i) goods or realty transferred in the ordinary course of business;

(ii) bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

(iii) interests in a corporation at least 50 per centum of the stock of which already is owned by the acquiring person or a wholly owned subsidiary thereof;

(iv) transfers to or from a Federal agency or a State or political subdivision thereof;

(v) transactions exempted from collateral attack under section 7 of this Act if approved by a Federal administrative or regulatory agency: *Provided*, That duplicate originals of the information and documentary material filed with such agency shall be contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

(vi) transactions which require agency approval under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), as amended, or section 3 of the Bank Hold-

ing Company Act of 1956 (12 U.S.C. 1842), as amended;

(vii) transactions which require agency approval under section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843), as amended, section 403 or 408(e) of the National Housing Act (12 U.S.C. 1726 and 1730a), as amended, or section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464), as amended: *Provided*, That duplicate originals of the information and documentary material filed with such agencies shall be contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least thirty days prior to consummation of the proposed transaction;

(viii) acquisitions, solely for the purpose of investment, of voting securities, if, at the time of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

(ix) acquisitions of voting securities, if, at the time of such acquisition, the securities acquired do not increase, directly or indirectly, the acquiring person's share of outstanding voting securities of the issuer; and

(x) acquisitions, solely for the purpose of investment, of voting securities pursuant to a plan of reorganization or dissolution, or of assets, other than voting securities or other voting share capital, by any bank, banking association, trust company, investment company, or insurance company, in the ordinary course of its business.

(C) For the purpose of subsection (b) (4) (B) of this section, "voting security" means any security presently entitling the owner or holder thereof to vote for the election of directors of a company or, with respect to unincorporated issuers, persons exercising similar functions.

(c) (1) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the periods specified in subsection (b) (1) of this section, require the submission of additional information and documentary material relating to the acquisition by any person or persons subject to the provisions of this section, or by any officer, director, or partner of such person or persons.

(2) The Federal Trade Commission or the Assistant Attorney General may, in its or his discretion, extend the periods specified in subsection (b) (1) of this section for an additional period of up to twenty days after receipt of the information and documentary material submitted pursuant to subsection (c) (1) of this section.

(3) No provisions of this section shall limit the power of the Federal Trade Commission or the Assistant Attorney General to secure, at any time, information or documentary material from any person, including third parties, pursuant to the Federal Trade Commission Act or the Antitrust Civil Process Act.

(4) The Federal Trade Commission and the Assistant Attorney General may waive the waiting periods provided in this section or the remaining portions thereof, in particular cases, by publishing in the Federal Register a notice that neither intends to take any action within such periods in respect of the acquisition.

(d) If a proceeding is instituted by the Federal Trade Commission or an action is filed by the United States, alleging that a proposed acquisition or merger violates section 7 of this Act, or section 1 or 2 of the Sherman Act (15 U.S.C. 1-2), and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition or merger *pendente lite*, and (2) certifies to the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires

relief *pendente lite* pursuant to this subsection—

(1) upon the filing of such certification the chief judge of such district court shall enter an order temporarily restraining consummation of such proposed acquisition or merger until final disposition of the motion for a preliminary injunction; and shall immediately notify the chief judge of the United States court of appeals for the circuit in which court is located, who shall designate a United States district judge to whom action shall be assigned for all purposes;

(2) the motion for a preliminary injunction shall be set down for hearing by the district judge so designated at the earliest practicable time, shall take precedence over all matters except older matters of the same character and trials pursuant to section 3161 of title 18, United States Code, and shall be in every way expedited;

(3) a preliminary injunction shall issue restraining consummation of such proposed acquisition or merger until the order of the Federal Trade Commission in respect thereof or the judgment entered in such action has become final unless the defendants show that the Federal Trade Commission or the United States does not have a reasonable probability of ultimately prevailing on the merits, or that they will be irreparably injured by the entry of such an order, in which case the court may deny, modify, or subject such preliminary injunction to such conditions as the court shall deem just in the premises: *Provided*, That a showing of loss of anticipated financial benefits from the proposed acquisition or merger shall not be sufficient to warrant denial, modification, or conditioning of such an injunction; and

(4) if a decision by the district court on such motion for a preliminary injunction is not issued within sixty days after issuance of the order temporarily restraining consummation of such proposed acquisition or merger, under paragraph (1) of this subsection, such order shall be vacated unless, for good cause, the chief judge of the United States court of appeals for such circuit extends such order.

(e) Failure of the Federal Trade Commission or the Assistant Attorney General to request additional information or documentary material pursuant to this section, or failure to interpose objection to an acquisition within the periods specified in subsections (b) (1) and (b) (2) of this section, shall not bar the institution of any proceeding or action, or the obtaining of any information or documentary material, with respect to such acquisition, at any time under any provision of law.

(f) (1) Whenever any person violates or fails to comply with the provisions of subsection (a) of this section, such person shall forfeit and pay to the United States a civil penalty of not more than \$10,000 for each day during which such person directly or indirectly holds stock or assets, in violation of this section. Such penalty shall accrue to the United States and may be recovered in a civil action brought by the United States.

(2) Whenever any person fails to furnish information required to be submitted, pursuant to subsection (c) (1) of this section, such person shall be liable for the penalties provided for noncompliance with the provisions of the Federal Trade Commission Act or the Antitrust Civil Process Act, as the case may be.

(g) In any proceeding instituted or action brought by the Federal Trade Commission or the United States alleging that an acquisition violates section 7 of this Act, or sections 1 or 2 of the Sherman Act (15 U.S.C. 1-2), upon application of the Federal Trade Commission or the Assistant Attorney General to the United States district court within which the respondent resides or carries on business, or in which the action is filed, such court shall, as soon as practicable, enter an order establishing the purchase price of the acquired stock or assets, requir-

ing the acquiring person or persons to maintain the personnel, assets, stock or firm being acquired as a separate entity unless the interests of justice require otherwise, and may enter an order requiring the profits of the acquired firm, stock, or assets to be placed in an escrow account, pending the outcome of the proceeding or action. Upon entry of a final order or judgment of divestiture under section 7 of this Act, or sections 1 or 2 of the Sherman Act (15 U.S.C. 1-2), the court shall order that the divestiture be accomplished expeditiously. To the extent practicable, the court may deprive the violator of all benefits of the violation including tax benefits."

SEC. 502. The provisions of this title shall be effective one hundred and twenty days after the date of enactment of this Act. Effective upon the date of enactment of this Act, the Federal Trade Commission is authorized and directed to carry out the requirements of sections 7A (b) (3) and (b) (4) of the Clayton Act, as amended by this Act.

Mr. MORGAN. Mr. President, just a few moments ago we adopted unanimously an amendment that I offered which had the effect of substantially limiting the jurisdiction of the various attorneys general.

In the bill, as it came out of the Judiciary Committee, the attorney general could bring an action for anything done that was forbidden by the Sherman Antitrust Act.

This was a rather broad authority because there are times when businesses could violate the Sherman Antitrust Act without being aware of it.

So we amended that, we struck that out. We limited the right of the attorney general to bring an action only when such parties were engaged in any activity deemed a per se offense, or arising out of the fraudulent procurement or enforcement of a patent in violation thereof.

In other words, now, for an attorney general to bring an action under this, the acts complained of would have to be acts that would constitute a per se offense, and the per se offenses having been defined by the court time and time again are those offenses which are naked restraints of trade with no purpose except stifling of competition. It has got to be a pretty clear case.

Second, the amendment struck the part which made it retroactive. They could not bring an action for any causes which might have already arisen.

So my amendment, having been adopted, substantially reduces or restricts the judiciary bill.

As the Senator from Arkansas pointed out, there is a provision in this bill which would allow for compensation of attorneys' fees to the defendants if the attorney general acted in bad faith.

I believe, Mr. President, that this is a bill now that could be acceptable to all of us. It is the same bill that was brought out by the Judiciary Committee with those two exceptions.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Mr. President, this amendment, or this substitute for a substitute, of course, cannot be amended.

For that reason, the amendments prior to that can be and, if necessary, I will offer an amendment to my substitute. But the effect of this substitute would be that of these five titles that we have

in the bill, there would be no opportunity whatsoever to pick and choose as between those titles. We are frozen in. There is no opportunity here in the Senate to perfect that Senate version.

I doubt if many Members of the Senate could say what the five titles are that are in the bill. But if this amendment is adopted, if this substitute is adopted, we will not have any opportunity whatsoever to amend any further. We have got to take it just as it is.

I do not believe the Senate wants to do that. I believe the Senate would like to have some opportunity to shape this bill. But the pending amendment does not give that opportunity.

I might say also that I am wondering if we should have staff personnel representing the entire democratic body of Senators that should be advising Senators from time to time as to strategy and as to what to say in answer to arguments made by Senators.

They make no suggestions to the Senator from Alabama and I am wondering why they should be volunteering from time to time to those who are seeking to ram this substitute through.

Mr. MORGAN. If the Senator will yield, I will answer the question.

Mr. ALLEN. So, Mr. President, in order that we will have more opportunity to shape this measure, or that we will not cut off amendments, I move to take the substitute offered by the Senator from North Carolina and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the Morgan substitute. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Indiana (Mr. BAYH), the Senator from Texas (Mr. BENTSEN), the Senator from Delaware (Mr. BIDEN), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CLARK), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Hawaii (Mr. INOUE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Wyoming (Mr. MCGEE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTGOMERY), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), the Senator from California (Mr. TUNNEY), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I also announce that the Senator from Alaska (Mr. GRAVEL) and the Senator from Montana (Mr. MANSFIELD) are absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), the Senator from Iowa (Mr. CLARK), the Senator from Indiana (Mr. BAYH), and the Senator from Connecticut (Mr. RIBICOFF) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from New Jersey (Mr. CASE), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The result was announced—yeas 36, nays 33, as follows:

[Rollcall Vote No. 204 Leg.]

YEAS—36

| | | |
|---------------|----------|------------|
| Allen | Curtis | McClellan |
| Baker | Dole | McClure |
| Bartlett | Domencio | Roth |
| Beall | Fannin | Scott, |
| Bellmon | Garn | William L. |
| Brock | Griffin | Sparkman |
| Buckley | Hansen | Stone |
| Bumpers | Helms | Taft |
| Burdick | Hollings | Talmadge |
| Byrd | Hruska | Thurmond |
| Harry F., Jr. | Johnston | Tower |
| Cannon | Laxalt | Young |
| Chiles | Long | |

NAYS—33

| | | |
|-----------------|----------|-------------|
| Brooke | Hatfield | Nelson |
| Byrd, Robert C. | Hathaway | Nunn |
| Cranston | Jackson | Percy |
| Culver | Leahy | Proxmire |
| Durkin | Magnuson | Randolph |
| Ford | Mathias | Schweiker |
| Glenn | McGovern | Scott, Hugh |
| Hart, Gary | Metcalf | Stafford |
| Hart, Philip A. | Morgan | Stevenson |
| Hartke | Moss | Symington |
| Haskell | Muskie | Weicker |

NOT VOTING—31

| | | |
|-----------|------------|----------|
| Abourezk | Gravel | Packwood |
| Bayh | Huddleston | Pastore |
| Bentsen | Humphrey | Pearson |
| Biden | Inouye | Pell |
| Case | Javits | Ribicoff |
| Church | Kennedy | Stennis |
| Clark | Mansfield | Stevens |
| Eagleton | McGee | Tunney |
| Eastland | McIntyre | Williams |
| Fong | Montale | |
| Goldwater | Montoya | |

So the motion to lay on the table was agreed to.

Mr. MORGAN. Mr. President, I offer an amendment to the substitute of the distinguished Senator from Alabama (Mr. ALLEN), to strike the last section, which reads as follows:

SEC. 4(g). This Act shall not be applicable in a particular State until that State shall provide by law for its applicability as to such State.

The PRESIDING OFFICER. Will the Senator send his amendment to the desk, so that the clerk can report it?

Mr. ALLEN. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator from Alabama will state his point of order.

Mr. ALLEN. This amendment would be out of order because it would get us back to what might be called the pure House bill, which could not be a substitute because it is the House bill. It does not change the language of the House bill, if this were adopted.

The PRESIDING OFFICER. The amendment offered by the Senator from

North Carolina is not out of order. Although the Allen amendment, if originally offered in the form it would take if the Morgan amendment were agreed to, would not be in order, being changed to that form, through the legislative process, the Allen amendment would not be subject to a point of order.

Mr. MORGAN. Mr. President, the same argument that the distinguished Senator from Alabama made with regard to the amendment that I had offered applied to his. As I understand it, now, that would preclude any other amendments, and we would be bound by it.

For that reason, Mr. President, I move that the Allen substitute, together with the amendment I just offered, be laid on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table.

Mr. ALLEN. Mr. President, I make the point of order that the amendment was voted to be laid on the table just a few minutes ago, and the motion was defeated. There has been no change at all in the Allen amendment, and the motion to lay on the table was defeated, so this would be a second vote on the same issue.

Mr. MORGAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MORGAN. I withdraw my motion to lay on the table.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. MORGAN. Mr. President, I send to the desk in writing my amendment to the Allen amendment.

Mr. ALLEN. I call for the yeas and nays.

The PRESIDING OFFICER. The clerk will state the amendment. Will the Senator from North Carolina send his amendment to the desk?

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. MORGAN) proposes to amend the Allen amendment by deleting section 4(g).

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

Mr. MORGAN. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The Senate will be in order during the rollcall.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. Senators who wish to converse will please remove themselves to the cloakrooms. The Senate will be in order. The rollcall will continue.

The rollcall was resumed.

Mr. MORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. I object.

The PRESIDING OFFICER. Objection is heard. The rollcall will continue.

The rollcall was resumed.

Mr. MORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MORGAN. Mr. President, I ask unanimous consent to modify my amendment by having it to read section 4(f) rather than 4(g).

The PRESIDING OFFICER. The Senator has the right to modify the amendment without unanimous consent and the amendment is so modified.

Mr. MORGAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GLENN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. Mr. President, I ask unanimous consent that Walker Nolan, of my staff, be accorded the privilege of the floor during consideration of this bill, H.R. 8532.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MORGAN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MORGAN. I yield the floor.

Mr. ALLEN. Mr. President, the amendment of the distinguished Senator from North Carolina goes to the very heart of the substitute, and that is the question of passing the bill but allowing the State to determine whether or not it should come under the provision of the act.

As we discussed earlier today, it would be a very simple matter for a State legislature to pass a bill—it could be done in two lines—stating that the provisions of the U.S. Statute 94 dash, whatever the number is, shall be and hereby are made applicable to the State of Alabama. That would give the assent of the State to vesting the attorney general of that State with the authority to act under this bill.

It seems to me that it is the very heart of the amendment. I have stated that, so far as I am concerned—and I believe this would be the attitude of those who oppose the bill—if this substitute were adopted, we could go ahead and finish the bill and send it back to the House

and get it in conference. I feel reasonably certain that there would be no major fight against the bill if this substitute were adopted.

If we eliminate this section by the amendment of the Senator from North Carolina, we are several days off from disposing of the measure. I hope that this could be dropped in conference. This amendment probably would be dropped in conference. We would end up with the House bill.

We are not anywhere near voting on my substitute, I feel sure, but at this time, if this language is not taken out of the substitute, it would give an indication that we are in for quite a long battle.

Mr. President, if no one else wishes to speak on this issue, I shall make a motion to table, but I shall not do so until those who wish to speak have that opportunity.

Mr. MORGAN. Mr. President, I should like to add a word.

Of course, I suspect that if we adopt the distinguished Senator's amendment to the bill, as he says, we will have no trouble passing it. But I do not believe it would be the kind of bill we really want to pass in the Senate.

My amendment would do this: First of all, if any State did not want its attorney general to have this authority, it would be much simpler for the State to exclude it than it would be to start from the ground up and have each State pass it one at a time.

We will debate later the merits of the proposal of the Senator from Alabama. However, I am of the opinion that if we get back to his substitute amendment and adopt it, we will preclude other amendments and we will be back in the same boat we would be in if we had adopted my amendment, according to the rules. So it is a question that we have to decide, and I hope we will not take it.

Mr. ALLEN. Mr. President, I move to table the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Alabama to table the amendment of the Senator from North Carolina. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ALLEN. Regular order, Mr. President.

Mr. HRUSKA. Regular order, Mr. President.

Mr. ALLEN. Regular order, if you please, Mr. President. The time has expired.

The PRESIDING OFFICER. The regular order is for Senators in the Chamber to vote if they so choose.

Mr. ROBERT C. BYRD. Mr. President, I vote "no."

Mr. FORD. Mr. President, how am I recorded?

The PRESIDING OFFICER. The Senator is recorded in the negative.

The second assistant legislative clerk

resumed and concluded the call of the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Texas (Mr. BENTSEN), the Senator from Delaware (Mr. BIDEN), the Senator from Idaho (Mr. CHURCH), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Hawaii (Mr. INOUE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Wyoming (Mr. MCGEE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), the Senator from California (Mr. TUNNEY), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I also announce that the Senator from Alaska (Mr. GRAVEL) and the Senator from Montana (Mr. MANSFIELD) are absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Connecticut (Mr. RIBICOFF) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from New Jersey (Mr. CASE), the Senator from Nebraska (Mr. CURTIS), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The result was announced—yeas 34, nays 33, as follows:

[Rollcall Vote No. 205 Leg.]

YEAS—34

| | | |
|---------------|----------|------------|
| Allen | Dole | McClellan |
| Baker | Domenici | McClure |
| Bartlett | Fannin | Roth |
| Beall | Garn | Scott |
| Bellmon | Griffin | William L. |
| Brock | Hansen | Sparkman |
| Buckley | Hatfield | Stone |
| Burdick | Helms | Taft |
| Byrd | Hollings | Talmadge |
| Harry F., Jr. | Hruska | Thurmond |
| Cannon | Johnston | Tower |
| Chiles | Laxalt | Young |

NAYS—33

| | | |
|-----------------|-----------------|-------------|
| Bayh | Hart, Philip A. | Muskie |
| Brooke | Hartke | Nelson |
| Bumpers | Haskell | Nunn |
| Byrd, Robert C. | Hathaway | Percy |
| Clark | Jackson | Proxmire |
| Cranston | Leahy | Schweiker |
| Culver | Magnuson | Scott, Hugh |
| Durkin | McGovern | Stafford |
| Ford | Metcalfe | Stevenson |
| Glenn | Morgan | Symington |
| Hart, Gary | Moss | Weicker |

NOT VOTING—33

| | | |
|-----------|------------|----------|
| Abourezk | Huddleston | Montoya |
| Bentsen | Humphrey | Packwood |
| Biden | Inouye | Pastore |
| Case | Javits | Pearson |
| Church | Kennedy | Pell |
| Curtis | Long | Randolph |
| Eagleton | Mansfield | Ribicoff |
| Eastland | Mathias | Stennis |
| Fong | McGee | Stevens |
| Goldwater | McIntyre | Tunney |
| Gravel | Mondale | Williams |

So the motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on agreeing to the amendment of the Senator from Alabama.

Mr. MORGAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BUMPERS). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUCKLEY. Mr. President, amendment No. 1701, which proposes to amend section 401 of the Hart substitute, provides for an award of reasonable attorneys' fees and all costs necessary to support the litigant's position when the defendant successfully defends his position. When a State attorney general brings an action under the parens patriae provisions of the pending legislation and does not prevail, the State shall be obligated to reimburse the defendant who has been literally forced into expenditures which can easily run into the hundreds of thousands of dollars but who has been vindicated by the results of the litigation. Especially given the potential for abuse, I believe it is unwise to delegate these sweeping powers to States' attorneys general without strong provisions that will insure that the private parties are left whole when and if the judicial process had vindicated them. We have heard much about Government abuse and the arrogance of power. It seems to me that, without a strong provision in the parens patriae section for full reimbursement of all reasonable costs of defense, the Congress will be establishing conditions where plaintiff's abuse of discretion or poor judgment is a burden we assign to the defendant. That is very unfair.

I am convinced that the 50 new "defenders of the public interest" proposed in the Hart-Scott substitute must be held accountable for the publicly funded litigation that proves to be unfounded. Without a legal costs section, companies can look forward to having "legal wars of attrition" waged against them in any State in which an ambitious attorney general sees political advantages in protracted antitrust litigation.

The result would be that a large corporation—or even a small one under the expanding ambit of the antitrust laws—could well be forced into a consent decree settlement for no reason other than a decision that prudence dictates avoiding what could eventually become very high legal costs.

The House took a modest step to avert such a result by allowing a discretionary grant of legal fees when a State's case

is frivolous or in bad faith. It is hard to imagine how a court would define "frivolous" or "in bad faith," never mind the problem of proving their existence. We have in such language a problem not unlike the burden of proving "malicious" under the Sullivan doctrine in libel cases involving public officials. It seems to me that justice requires that the right to reimbursement be automatic in cases where the defendant is vindicated.

The mere status of being a defendant in an antitrust action is, in terms of time, money, and anxiety, more punishment than most convicted criminals ever see. Anyone who doubts this assertion should consider the case of Firestone and Goodyear. For 12 years, the Justice Department conducted discovery against those two companies, resisting any and all attempts by the defendants to bring the matter to trial. During that period, defendants spent roughly \$2 million in addition to indeterminable amounts of executive time. When finally forced to come to trial, the Justice Department dropped charges, admitting in a 23-page memorandum that it had never had any direct evidence of wrongdoing and that it had used discovery in order to determine whether it had a case.

How many criminal defendants are able to pay \$2 million and suffer 12 years of proceedings in anticipation of trial? How many have been forced to capitulate before charges they know to be unfounded? Clearly the time has come to recognize, and adjust, the unequal power held by Government.

Mr. President, if we are going to multiply fiftyfold the ability of Government to engage in this sort of antitrust litigation, then at least we should be willing to compensate the defendants in instances in which the Government is clearly in error. This is why I have introduced my amendment to section 401 of the Hart substitute to grant successful defendants in litigation under the parens patriae provisions their reasonable legal costs as a matter of right.

Mr. BAYH. Mr. President, I would like to take this time to speak in complete support of Senator PHILIP HART's amendment to H.R. 8532 to conform that bill to the text of S. 1284, as approved by the Judiciary Committee on April 6.

Accordingly, it is my intention to support a petition, which I understand will be filed shortly, to invoke cloture on the debate of Senator HART's amendment. If the Senate votes to invoke cloture, as I strongly hope it will, it is then my intention to support Senate passage of S. 1284 in the form approved by the Judiciary Committee.

I certainly have no desire to prolong the debate on S. 1284, but I do want to outline and explain the reasons for my positions.

Before I do that, though, I would like to digress for a moment to express my admiration and respect for the outstanding work that has been done on S. 1284 by its two sponsors, Senator HART of Michigan and Senator SCOTT of Pennsylvania. From the time they introduced S. 1284 in March of last year, Senators HART and SCOTT have been extraordinarily fair—as well as tireless—in

agreeing to hold the numerous additional hearings and markup sessions requested by opponents of the bill. Their fairness to and concern for those opposed to S. 1284 has been such that I do not believe any one can plausibly claim this bill has been inadequately or hurriedly considered by the Judiciary Committee. In my view, Senator HART and Senator SCOTT have, for over a year, literally bent over backward to be as accommodating as possible to those opposed to all or part of S. 1284. And for that effort, I do not believe this body can commend them enough.

Now let me return to my decision to vote for cloture and, if that is invoked, for final passage.

My general view, since becoming a Member of this body, has been that the Senate should not be denied the right to vote on measures which reach the floor simply because a handful of Members persist in endless and meaningless debate. For that reason, it has been a rare occasion in my 13 years here when I have not supported a move to cutoff a filibuster and invoke cloture.

Leaving aside, however, my general outlook in filibusters, I can see absolutely no justification for allowing this particular bill to be subjected to a debate clearly designed for the sole purpose of preventing a vote on S. 1284.

First of all, this is not a bill, as I have already indicated, which has been hurried through the Antitrust Subcommittee or the Judiciary Committee. Indeed, there have been few bills which I can recall the Judiciary Committee considering as carefully and deliberately as this one. The record indicates that the Antitrust Subcommittee held 9 full days of hearings on S. 1284, at which more than 40 witnesses testified. And, I might add, not a single witness suggested by the opponents of the bill was denied the right to appear at one of those days of hearings. The Judiciary Committee, in considering S. 1284, held 8 separate days of markup sessions, totaling more than 16 hours of debate and involving more than 50 proposed amendments to the bill. I think those who claim this bill is being hurried through the Senate would be hard put to find another piece of legislation that has received such careful committee review.

Second, and in a similar vein, the entire Senate has devoted over 3 floor days to S. 1284 to date, and several more can be expected even if cloture were to be invoked. In light of those circumstances, it is difficult for me to give credence to any arguments that an attempt to limit debate would deny a minority the opportunity to be heard, or would help to rush a piece of legislation through the Senate without proper consideration. To the contrary, it would be the majority which is denied the right to be heard if debate continued unlimited.

Third, I think the Senate has an obligation to the Nation to record itself on a bill which has attracted such significant and bipartisan support throughout the country. There are, in any year, only a few Senate bills which gain such wide national support as S. 1284. Among the organized groups strongly supporting

S. 1284 are: the National Association of State Attorneys General, the Computer Industry Association, the National Congress of Petroleum Retailers, Consumer Federation of America, United Mine Workers of America, National Farmers Union, AFL/CIO, National Rural Electric Cooperative Association, United Auto Workers, International Ladies Garment Workers Union, Independent Gasoline Marketers Council, National Consumers League, Retail Clerks International Association, National Retired Teachers Association, American Association of Retired Persons, United Steelworkers of America, Energy Action Committee, Committee for Public Advocacy, National Consumer Congress, Public Interest Economics Center, Common Cause, National Council of Senior Citizens, National Education Association, Amalgamated Clothing Workers of America, International Association of Machinists and Aerospace Workers, Congress Watch and the American Federation of State, County and Municipal Employees. I honestly do not see how we can expect the respect of these distinguished groups and their members, of our own constituents, and of the Nation if we do not even allow ourselves to vote on S. 1284.

Fourth, and finally, this is not an antitrust bill which the House will be unable to pass this year. The House has already passed a bill equivalent to the *parens patriae* title of S. 1284. It is very likely to soon pass bills similar to title II—Civil Process and Clayton Act Amendments and title V—Premerger Notification and Stay Amendments. And, because of changes which were made in S. 1284 prior to Judiciary Committee approval, the administration is no longer threatening a veto. I believe the chances are excellent that the President will sign a bill containing the elements of S. 1284. So if this body is at all serious about legislation designed to help enforce our antitrust laws, it has an ideal vehicle this year in S. 1284. Quite simply, this is a bill which has an excellent chance of becoming law, and we should not destroy that chance by refusing to even take a vote on S. 1284.

In sum, Mr. President, I think the arguments are compelling that the Senate should soon limit the debate on S. 1284 and be allowed to vote on this important piece of antitrust legislation. I therefore urge my colleagues to support a petition to invoke cloture on this debate.

As I have said, if cloture is invoked, I intend to vote for final passage of S. 1284 in the form approved by the Judiciary Committee. I plan to do so because this bill, the Antitrust Improvements Act of 1976, provides measures sorely needed to ensure the effective enforcement, at the Federal as well as the State levels, of our antitrust laws. Without such effective enforcement, I do not believe we can reasonably hope that our antitrust laws will ever come close to achieving their intended goals of preserving competition and protecting the public.

Let me emphasize here a point which has often been overlooked in the debate of the last few days. This bill is concerned solely with providing additional enforce-

ment tools for existing laws and not with creating new antitrust offenses or liabilities. In other words, conduct which is permitted under our present antitrust laws will still be permitted if S. 1284 is enacted. All that will change is that the Justice Department, the Federal Trade Commission and the State attorneys general will be able to enforce the laws already passed by Congress. And, of course, under this bill, they will be able to do so through means which the experts who testified before the Antitrust Subcommittee believe are clearly and fully consistent with constitutional protections.

I think it is significant that the Judiciary Committee believes, after considerable debate among its members and after extended consultation with the leading antitrust experts in the country, that the most important way at present to generally improve the antitrust laws is not to create further offenses but rather just to enforce existing offenses. I am in complete accord with this Judiciary Committee view of the importance of meaningful enforcement of current laws. But I must add one caveat.

In the energy area, I believe strongly that more than just tightened enforcement is needed. In my view, the energy sector of our economy has become so concentrated and intertwined that greater enforcement of the Sherman and Clayton Acts is not enough. For that reason, I have introduced with Senator HART of Michigan a bill, S. 2387, that would require vertical divestiture of this Nation's largest oil companies.

That bill is presently before the Judiciary Committee, having been approved by the Antitrust Subcommittee on April 8. The Judiciary Committee is scheduled to vote on S. 2387 on June 15, and I deeply hope it will approve the bill in its present form and send it to the Senate for its prompt consideration.

Obviously, S. 2387 is a very major, though absolutely necessary, step to return the industry to a truly competitive state. Perhaps if the critical enforcement tools provided for in S. 1284 had been in existence decades ago, S. 2387 would not be necessary. It is my sincere hope that by creating those tools now, we can eliminate the need in future years to apply such drastic measure to other industries.

In the last few days, a great deal has been said on this floor about the nature of the enforcement tools provided in S. 1284. They are also discussed in detail in the very thorough Judiciary Committee report on this bill, and I recommend that report to any of my colleagues who are uncertain about exactly what S. 1284 would do. I would like to use my remaining time to discuss two of the important and controversial enforcement tools that S. 1284 would create—*parens patriae*—title IV—and premerger notification and stays—title V.

Title IV would permit State attorneys general to bring private treble damage actions, for violations of the Sherman Act, on behalf of consumers residing in their State. The purpose of this enforcement tool is to fill a wide gap in existing enforcement of the Sherman Act. At present, violations of the Sherman Act,

which injure tens of thousands of consumers, are not corrected because of inadequate resources at the Federal level. These violations can be corrected—and the consumer victims of the violations can be compensated for their losses—if State attorneys general are allowed to bring suits on behalf of the injured consumers.

In bringing these parens patriae suits, the State attorneys general will not be attempting to enforce new antitrust standards of conduct. They will only be attempting to recover damages for consumers injured by conduct violative of the Sherman Act. Without the authority to bring these parens patriae suits, such conduct would continue to occur, costing consumers tens of millions of dollars annually, and it would be virtually immune to correction.

The main components of the parens patriae concept established in title IV are, in my view, absolutely necessary to ensure the ability of parens patriae suits to compensate the victims of Sherman Act violations and to deter further violations of the act. For instance, treble damages are necessary as a measure of relief simply because relief of only single damages would provide considerably less incentive to corporations not to violate the act. And, of course, the treble damage concept is one which has been in our antitrust laws since the 1890's.

Further, the aggregation of damages concept is absolutely necessary to the effective operation of parens patriae. Unless damages can be aggregated in these suits, the courts would be clogged with thousands of consumers individually attempting to prove the extent of their damages. With aggregation, separate proof for each injured consumer will be unnecessary, though the State Attorney General will still have to prove a violation of the Sherman Act, the violation's injury to consumer, and the approximate amount of consumer damage.

I firmly believe that parens patriae is the only realistic means to insure that consumers do not remain unprotected from Sherman Act violations. I am convinced the concept is sound in law and will be effective in operation, and I urge my colleagues to support it in the form approved by the Judiciary Committee.

Title V would create a mechanism to provide advance notification to the Justice Department and the FTC of significant mergers prior to their consummation. It would also create a means by which the Attorney General or the FTC could enjoin illegal mergers before they are consummated.

Specifically, the notification provisions would amend the Clayton Act to provide for 30 days advance notification of mergers involving companies having at least \$100 million in assets with companies having at least \$10 million in assets. Only about 100 transactions a year would be affected by this requirement. But these are transactions which could have a serious and harmful effect on the competitive state of our economy. For that reason, it does not seem unreasonable to me to allow the Justice Department and the FTC some advance warning of such

transactions. Only with advance warning will these antitrust authorities be able to determine if governmental action to prevent these mergers is appropriate prior to their consummation. At present, the Government is often placed in the nearly impossible position of seeking to prevent mergers only after it has been publicly announced that they have occurred.

The injunctive provisions would permit the Attorney General or the FTC to seek a court order preventing the consummation of mergers which they believe to be violative of the Clayton Act. If the Attorney General or the FTC certify to a court that the public interest requires relief pendente lite against a proposed merger, a court may issue a temporary restraining order of up to 60 days in duration. Before the 60-day period has expired, a court may issue a preliminary injunction as to the proposed merger, unless the defendant is able to prove the Government does not have a reasonable probability of ultimately prevailing on the merits or the defendant will be irreparably injured by the issuance of such an injunction.

It is my firm view that these injunctive provisions are a badly needed addition to our antitrust laws. Without them, we will be left with our present situation: the Government has an almost impossible burden of proof in attempting to prevent mergers prior to consummation; and once they have been consummated, they are rarely pulled apart by the courts, even where it is judicially found that the mergers were illegal. That situation must be changed, and I believe the injunctive provisions of S. 1284 will be a decided change in the right direction.

Mr. President, let me conclude by saying that I hope the Senate will soon agree to allow a vote on S. 1284 and will then pass this extremely important piece of antitrust legislation.

ORDER FOR ADJOURNMENT TO 9:45 A.M. TOMORROW

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 9:45 tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR THE RECOGNITION OF SENATOR HARRY F. BYRD, JR. TOMORROW

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent after the two leaders or their designees have been recognized under the standing order tomorrow, Mr. HARRY F. BYRD, Jr., be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS AND RESUME CONSIDERATION OF H.R. 8532 TOMORROW

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent that upon the completion of the order for the recogni-

tion of Mr. HARRY F. BYRD, Jr. tomorrow there be a period for the transaction of routine morning business not to exceed 30 minutes, with statements limited therein to 5 minutes each; at the conclusion of which morning business the Senate will resume consideration of H.R. 8532, the antitrust legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BUMPERS). Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD, Mr. President, the Senate will convene at the hour of 9:45 a.m. tomorrow. After the two leaders or their designees have been recognized under the standing order, Mr. HARRY F. BYRD, Jr., will be recognized for not to exceed 15 minutes, after which there will be a period for the transaction of routine morning business, not to exceed 30 minutes, with statements therein limited to 5 minutes each.

At the conclusion of routine morning business, the Senate will resume consideration of the antitrust legislation. Roll-call votes may occur on tomorrow on procedural matters, or on amendments to the legislation, or on motions in regard to the same.

At 12 noon tomorrow, the Senate will go into executive session and after not to exceed 20 minutes for debate on the nomination of Mr. David M. Lilly of Minnesota to be a member of the Board of Governors of the Federal Reserve System for the unexpired term of 14 years from February 1, 1964, a rollcall vote will occur on the nomination; after which, without any intervening motion or debate, a rollcall vote will occur on the nomination of Mr. George Henry Kuper of the District of Columbia to be Executive Director of the National Center for Productivity and Quality of Working Life.

Upon the disposition of that nomination, without any intervening motion or debate, the Senate will return to legislative session and the Senate will resume immediately the consideration of the antitrust legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT TO 9:45 A.M. TOMORROW

Mr. ROBERT C. BYRD, Mr. President if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until the hour of 9:45 a.m. tomorrow.

The motion was agreed to; and at 6:12 p.m. the Senate adjourned until tomorrow, Friday, May 28, 1976 at 9:45 a.m.

EXTENSIONS OF REMARKS

NAVY SHIPBUILDING PLANS REQUIRE CLOSEST CONGRESSIONAL SCRUTINY—Part II

HON. BELLA S. ABZUG

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Ms. ABZUG. Mr. Speaker, yesterday I included the first half of the transcript from a panel discussion on the "Robert MacNeil Report" on WNET-TV-PBS—in which my distinguished colleague from Colorado (Ms. SCHROEDER) participated.

Since the appropriations bill for the Department of Defense will soon be before the House, I would urge my colleagues to weigh carefully the arguments presented concerning the shipbuilding plans of the Navy.

The second half of this decision, which should provide guidance to my colleagues in this matter, follows:

MACNEIL. Admiral Zumwalt, given the deficiency you said you saw in the Navy, what kinds of ships should we be building so that the Navy can fulfill the roles you see for it?

ZUMWALT. Well, I agree with the second scene of Admiral La Rocque there, and disagree with the first scene. In the first scene, he said that we could handle it, in the second scene he said we couldn't. He's right the second time. There is also something to be said for his views about the way in which we are doing less than an optimum job with regard to the construction of our ship program.

The views of the Chief of Naval Operations, the Secretary of the Navy, Secretary of Defense and the President of the United States each year get somewhat overruled by Admiral Rickover and his associates in Capitol Hill, and drive us in the direction of ever-costlier ships, and therefore reduced numbers.

MACNEIL. What do you think we should do?

LA ROCQUE. Instead of in the direction of a much larger number of lower-cost ships. There has never been any argument about the need to have nuclear propulsion in submarines, and in some aircraft carriers and some escorts to go with those nuclear aircraft carriers. But it's always been clear that when you go beyond that, and try to make every combatant ship nuclear-propelled, you're spending your money wrong because you build one huge, expensive combatant for every five that you could have if they were conventionally propelled.

MACNEIL. So you are advocating this building of more smaller ships.

ZUMWALT. A mix of ships. That program submitted by my successor was, I think, a good one and the efforts of Admiral Rickover to get it overturned in violation of Presidential policy are I think harmful.

MACNEIL. Admiral La Rocque, what kinds of ships should be building, do you think?

LA ROCQUE. Well, first of all, I think you have to look at what the ships we have built today are for. And I agree with Congresswoman Schroeder; we've built the wrong kind of Navy. We've built the Navy to bomb and attack in Africa, South America, Southeast Asia under the euphemism of projection of military power ashore. So that

we built a whole navy around a huge carrier force.

I would think that we ought to build no more attack carriers, then we would not have to build escorts to protect those carriers.

MACNEIL. Would you stop building the ones that are planned . . . would you not build the ones that are in the works?

LA ROCQUE. No, I would go ahead and complete those that are in the works. There's still a need for aircraft carriers, but the role is greatly diminishing, and that we must be attuned to. I think we need as Congresswoman Schroeder pointed out more in terms of anti-submarine capability. The only threat to the United States from the Soviet Union is from their strategic submarines and from their nuclear attack submarines, and that is where the United States Navy ought to be putting its emphasis, specifically on smaller ships.

We gave away in the past few years all of our anti-submarine warfare carriers. Admiral Zumwalt tried to get some smaller ones back in, was unsuccessful. But anti-submarine warfare is the most important role the Navy has to play today, and if it would get on with that instead of trying to build forces to invade South Africa or Africa anywhere, South America and Asia, this nation would be stronger and we'd have a better Navy.

MACNEIL. Thank you, sir.

Jim?

LEHRER. Yes, I just can't help but note that the kind of discussion that you all have been having thus far has not been happening on the national political scene; it's not even happening in Congress.

SCHROEDER. Oh, yes.

LEHRER. Well, but not on these kinds of things. I was just saying—Admiral Zumwalt you said a moment ago, for instance, that the Secretary of Defense has to say certain things because he was told to do so, for political reasons. Later on, Admiral Rickover has had a tremendous influence even though it doesn't necessarily set the pattern. What's going on?

SCHROEDER. Let me say that this really has been an incredible year, and I've been very surprised that the press missed it, because the Seapower Subcommittee in the House did something that was just unheard of. They have always rolled over and played dead and then they brought up whatever it was and usually they've just rubber-stamped it.

Now the one great exception that everyone knows is Admiral Rickover, because he was the one who really moved out for nuclear-powered submarines and people said no, and then he won and he turned out to be very right, and so people think he has undue influence and—you know—there's been all sorts of great things attributed to Admiral Rickover.

But the Seapower Subcommittee, for the last three years, has been listening to the Navy come in and cry. You know, good crocodile tears about we don't have enough ships, we've got overruns like you can't believe, the maintenance problem is terrible, and we never knew what to do, because practically everything they've ever asked for has been voted for, but every year the script is exactly the same.

This year they came in, asked for some ships, and went through the whole thing. The Committee looked at it, they laughed, and the Committee rewrote the entire budget. Absolutely rewrote the whole entire budget. All right, a hundred and sixty-seven Admirals in the Pentagon didn't have a clue of what happened, because they looked at it,

and it didn't even look like what they brought over.

LEHRER. You see that as a good thing.

SCHROEDER. Well, it's the first time I've ever seen Congress really assert itself, and I think it shows you what a very serious issue there is upon which many reasonable people differ. But you get politics and everything into it, and it's very tough.

LEHRER. How do you feel about that, Admiral Zumwalt, Congress rewriting what the Navy wants?

ZUMWALT. Well, I think the Congress has every right to raise armies and maintain navies as the Constitution provides; I don't think this was, by any stretch of the imagination, a Congressional bill. It was a bill written by Admiral Rickover's study . . . and passed under the table.

LEHRER. What is the mystery of this man? Why can he do this?

SCHROEDER. Oh, no—I really would disagree there, because it really wasn't all that nuclear. What happened was the Seapower Subcommittee did pass a section called Title Eight a couple of years ago and we have had—you're right there—we have had a great debate going on as to whether or not we're going to comply with Title Eight, which says major combatants should be nuclear, and put the tonnage limit on it.

And they always come in and ask for conventional-powered major combatants. So the Committee did take all the major powered combatants—conventional-powered major combatants—and turned them into nuclear.

But the other thing they did was very interesting. They looked at those frigates and they wanted eight frigates. The President's just come in and asked for four more, part of his increase now is to have twelve frigates. The Committee looked at the frigates, and said, wait a minute, that's a single screw ship. We sent people out to look at it, they said it really doesn't have that much capability.

It had a ninety-five percent cost increase in two years; I mean, the thing is really expensive, and for a little more, you can get a ship that does much more.

LEHRER. But the bottom line is that you did rewrite it, and you added \$1.1 billion to what the Defense Department had asked, and added nuclear ships.

Let me ask Admiral La Rocque how do you analyze Admiral Rickover's mastery of the Congress?

LA ROCQUE. I think that Admiral Rickover's done a fine job in trying to explain his point of view to the Congress, and they've obviously bought some of it. I don't think it's been undue influence on the part of Admiral Rickover. I can tell you that under all the Chief of Naval Operations I ever served, we put as much influence on the Congress as possible to get our way, and we've been pretty successful over the years.

I would agree with you, too, Mr. Lehrer—that this matter of looking at the role of the Navy has not been adequately examined. I appreciate Congresswoman Schroeder's comment that there's been more effort this year than in the past. But I think we have to get right down to the basic issue of what is it we want to build this Navy for? And not argue whether it's going to be nuclear or conventional-powered, or whether they're going to be high ships or low ships—that obfuscates the problem.

What we want to do is decide what it is we're trying to do with this United States Navy.

LEHRER. You can't help but ask the ques-

tion too—and I would ask you, Admiral Zumwalt, in the heat of a Presidential campaign, with all these charges flying back and forth, is this the time to make major commitments in terms of the future of the Navy?

ZUMWALT. Well, I think a Presidential campaign is one of the few times when enough voters get seized with the issues that can begin to be the kind of awakening of the public that is very important. We have all kinds of confusion; you heard some of it tonight. Admiral LaRocque confuses the difference in strategic and conventional war, and he's not quite sure which it is that we will win and which it is that we will lose. It's just very important, I think, to have an awful lot of this kind of discussion against the backdrop of an issue that seizes the major attention of people, the election of a President.

And I think both of the great parties will be debating this from now until election time, and the people will be much more enlightened about this.

LEHRER. But are they really going to be more enlightened; that's the question.

ZUMWALT. I think so; I think so. You can only fool the people some of the time . . . [UNDERTALK] . . . and the more discussion there is, the likelier people are to understand the very serious debilitation that has come to pass in our armed forces. This is what, again, when Jim Schlesinger sought to try to get the facts out, and he is continuing to write and talk about it as are others who've had access . . .

MACNEIL. Admiral LaRocque wants to respond; Admiral?

LA ROCQUE. Well, I think anytime is a good time to discuss the role of the Navy and what it is that we need in the way of weapon systems. I think anytime is a bad time to indulge in personalities to try to make your point, and Admiral Zumwalt has tried to do that some tonight. I think Ronald Reagan has gone overboard and excited the Republican party and the President has had to respond.

Now I suppose, now that Admiral Zumwalt has doffed his naval hat and is running for office in Virginia, that he will be able to avoid personalities and demagoguery in true naval tradition; I hope he will.

LEHRER. Congresswoman Schroeder, you get the last word.

SCHROEDER. I would like to just say that the thing I am afraid of, so often happens, is we don't get to the actual nitty-gritty of the issue. We tend to get to the scare tactics; it becomes again, how much is ever enough and how do you really talk about what it should do in a calm atmosphere? Plus, don't forget the money involved. If you happen to be a shipbuilding contractor, there's a lot of money involved in these things . . .

LEHRER. Thank you.
Robert?

MACNEIL. Thank you all very much; thanks, Jim. Thank you.

Jim Lehrer and I will be back tomorrow evening; I'm Robert MacNeil. Good night.

THE HUMPHREY-HAWKINS BILL

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. LaFALCE. Mr. Speaker, there are many issues which we have to consider in regard to H.R. 50, the Full Employment and Balanced Growth Act. In the recent primary campaigns, candidates of all persuasions have been asked to express

their views on this measure. I believe that it is important that we do not get swept away in the flurry of campaign rhetoric and sloganeering. Instead, we must take the time to carefully examine both the strengths and weaknesses of this legislation.

With that in mind, I would like to take this opportunity to share with you the excellent testimony of Mr. Charles Schultze, senior fellow, Brookings Institution, and professor of economics, University of Maryland, before the Employment, Poverty, and Migratory Labor Subcommittee of the Senate Labor and Public Welfare Committee on May 14, 1976. His testimony, which in my judgment makes it clear that many amendments to H.R. 50 are necessary before it is deserving of passage, follows:

THE ECONOMICS OF THE FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1976 (S. 50)

Mr. Chairman and Members of the Committee, the full Employment and Balanced Growth Act of 1976, S. 50, addresses the most important domestic problem of this decade—high and persistent unemployment. The chief obstacle to overcoming that problem, both politically and economically, is inflation. I believe that S. 50 does not sufficiently recognize that fact, and hence needs to be changed in a number of important respects. Moreover, the combination of the "employer-of-last-resort" provisions in this bill and the wage standards that go with it threaten to make the inflation problem worse. These sections, particularly, need extensive reworking.

THE IMPORTANCE OF FULL EMPLOYMENT

The emphasis which S. 50 puts upon the goal of full employment is, in my view, quite proper. We are a society in which not only economic rewards but status, dignity, and respect depend heavily on a person's place in the work force. The single most important contribution toward solving the major social problems of this generation—deteriorating inner cities, inequality among the races and between the sexes, high and still rising crime rates, poverty, insecurity, and hardship for a minority of our citizens—would be a high level of employment and a tight labor market.

However valuable some of the federal government's manpower training and other social programs may be, they cannot hold a candle to the efficacy of a tight labor market. Necessity is the mother of invention. When 4 million business firms are scrambling for labor in a highly prosperous economy, it suddenly turns out that the unemployable become employable and the untrainable trainable; discrimination against blacks or women becomes unprofitable. Instead of being the concern solely of bureaucrats in government training programs, the finding, counseling, training, and hiring of the disadvantaged becomes the goal of the entire profit-seeking private enterprise system.

In the second World War, to choose a dramatic example, we pushed the unemployment rate below 2 percent. And the result of that tight labor market was revolutionary. Black-white income differentials shrank faster than in any subsequent period; the income distribution became sharply more equal; employers scoured the back-country farm areas and turned poor and untrained sharecroppers into productive industrial workers, whose sons and daughters became the high school graduates of the 1950's and whose grandchildren will shortly begin to enter college in droves.

The importance that S. 50 attaches to high employment, therefore, is not misplaced. The nation cannot afford over the next decade to settle for a relatively sluggish economy and a high unemployment rate.

WHAT STANDS IN THE WAY OF FULL EMPLOYMENT?

The basic problem with achieving and maintaining full employment is not that we lack the economic tools to generate increased employment. The traditional weapons for stimulating economic activity—easy money, tax cuts, and government spending for worthwhile purposes—are perfectly capable of generating an increased demand for public and private goods and services thereby inducing employers to hire more workers. Moreover, we do not need to have the government hire people directly on special programs of public service employment as a long run device to reduce unemployment. The real problem is that every time we push the rate of unemployment towards acceptably low levels, by whatever means, we set off a new inflation. And, in turn, both the political and the economic consequences of inflation make it impossible to achieve full employment, or once having achieved it, to keep the economy there.

With unemployment now at 7.5 percent, the problem is not an immediate one. A rapid recovery could continue for the next year and a half or so, pushing the unemployment rate down steadily, without setting off a new inflation. But experience in the postwar period to date strongly suggests that once the overall rate of unemployment edges below 5½ percent or so, and the rate of adult unemployment gets much below 4½ percent, inflation will begin to accelerate. And since the underlying rate of inflation, even with good luck, is likely to be running at 4 or 5 percent a year, the new acceleration could lead to very high rates indeed.

The charts on the following pages illustrate the relationship between inflation and tight labor markets during the four inflationary periods since 1949—the Korean War, the inflation of 1955–57, the Vietnam War inflation, and the current round, kicked off in 1973. Each panel of the charts depicts one of those four episodes. The dashed lines show the underlying rate of inflation, measured as the rate of wage increase adjusted for long term productivity gains. Nonfarm prices tend to follow this underlying rate of inflation, sometimes rising faster, sometimes slower, but eventually moving parallel with these adjusted wage costs. The solid lines show the adult unemployment rate, averaged over four quarters. With obvious variations in timing and magnitude, the central story is clear—as the adult unemployment rate is pushed down below the neighborhood of 4½ percent, the underlying inflation rate rises above its prior path. In the absence of major new tools for inflation control, pushing the adult unemployment rate by the 3 percent target of S. 50 would surely generate substantial inflation.

Unless the inflationary consequences of low unemployment are tackled, it will prove impossible to get the economy to that level and keep it there. The first problem is political. When unemployment is rising, layoffs are high and for every person actually unemployed many more are afraid for their own jobs. Hence, it is easy to generate political support for the fiscal and monetary measures necessary to stimulate employment, even when inflation is high (witness the 1975 tax cut and \$75 billion deficit). But when unemployment is falling, even though still large, layoffs decline; concern about unemployment shrinks while concern about inflation rises. Taking the measures necessary to reduce unemployment still further becomes politically impossible when inflation begins to accelerate.

Most of the economics profession would agree that holding the rate of adult unemployment at 3 percent would lead to inflation. There is, within the profession, a division of opinion about whether the resultant

inflation would be a high but steady rate or an ever-accelerating rate. If the latter view is correct, then keeping employment to the 3 percent target would eventually become impossible, since no economy could stand an ever increasing rate of inflation. One of the reasons we do not know the answer to this controversy is that the political consequences of inflation have been such that the nation has never persisted in holding adult unemployment to 3 percent for many years running.

I believe, therefore, that a realistic view of both the economics and the politics of inflation and unemployment lead to one central conclusion: The stumbling block to low unemployment is inflation; the supporter of a full employment policy must of necessity become a searcher for ways to reduce the inflation that accompanies full employment.

S. 50 AND INFLATION

There are a number of ways in which tight labor markets lead to inflation. One of these is the acceleration of wage increases which begins to occur well before the overall unemployment rate has been reduced to reasonable levels. In this context, it is useful to look at the structure of the labor market during periods when the unemployment rate is lower than it is during today's recession, but higher than we would like it to be.

Table 1, on the next page, presents some estimates of how unemployment would be distributed among various groups, and the nature of that unemployment when the economy operates at an overall unemployment rate of 5 percent. Despite the still high overall unemployment, the rate among men from 25 to 64 years of age is well below 3 percent, and among women 45 to 64, about 3 percent. Teenage and young adults, however, who constitute only one-quarter of the labor force make up over one-half of the unemployed.

TABLE 1.—STRUCTURE OF UNEMPLOYMENT WHEN THE OVERALL RATE IS 5 PERCENT

| Group | Unemployment rate (percent) | Average duration (weeks) | Number of unemployed spells per year |
|----------------|-----------------------------|--------------------------|--------------------------------------|
| Male: | | | |
| 16 to 19..... | 13.9 | 4.0 | 1.8 |
| 20 to 24..... | 7.3 | 4.5 | .9 |
| 25 to 44..... | 2.7 | 5.7 | .3 |
| 45 to 64..... | 2.2 | 6.6 | .2 |
| 65 plus..... | 3.0 | NA | NA |
| Female: | | | |
| 16 to 19..... | 15.2 | 4.0 | 2.0 |
| 20 to 24..... | 8.4 | 4.1 | 1.1 |
| 25 to 44..... | 4.9 | 4.3 | .6 |
| 45 to 64..... | 3.1 | 5.2 | .3 |
| 64 plus..... | 2.9 | NA | NA |

Addendum: Males and females age 16 to 24—percentage of labor force, 24; percentage of unemployed, 51.

Source: 1973 structure of labor force and unemployment (when the unemployment rate was 4.9 percent). Estimates of durations and spells adapted from George Perry, "Unemployment Flows in the U.S. Labor Market," "Brookings Papers on Economic Activity, 2:1972," table 3, p. 259.

The unemployment among teenagers and young adults, under such labor market conditions, arises not so much from a continuing inability to find a job, but rather from a number of short spells of unemployment, as many young people go from one unattractive job to another. The 16-19 year old, for example, would average two spells of unemployment a year, of about four weeks' duration each.¹

The central problem is that when the overall unemployment rate gets down into the

¹ The unemployment duration estimated in Table 1 understates the true duration since many young people, discouraged at finding attractive jobs, drop out of the labor force for awhile.

neighborhood of 5 percent, the job market for experienced prime age workers becomes very tight. There are many unfilled job vacancies and not many unemployed in this age group. The large number of younger unemployed workers do not move in to fill these vacancies. As a consequence, wages are bid up sharply and prices begin to rise, even though the overall unemployment rate is still high.

One approach to this problem lies in the whole panoply of job counseling, training, and placement services for youth. Federal efforts in this direction should be continued and expanded. And a carefully structured public service program for youth could also contribute. (Strangely, the "employer-of-last-resort" program in S. 50 is restricted to adult workers.) But in all honesty, the record of recent years does not warrant a confident hope that such programs can be the principal solution to the problem.

GOVERNMENT AS EMPLOYER OF LAST RESORT

Sec. 206(d) of S. 50 establishes a major new policy—the federal government is pledged to become the employer-of-last-resort for those who cannot find work elsewhere. Sec. 206(e) (4) provides that a person shall be eligible for an employment opportunity under this section if, among other things, he or she has not refused to accept a job that pays whichever is the highest of either the prevailing wage for that job or the wage paid in the government-created "employer-of-last-resort" job. In turn, Sec. 402 sets up a standard for wages in the "last resort" jobs which are bound to be highly inflationary.

Under Sec. 402(c) (i), for example, the wage paid for a "last resort" job in which

a state or local government is the employing agent must be equal to that paid by the same government for people in the same occupation. But in states or cities with union agreements for municipal employees, and in many cases even without union agreements, the wage for a low-skill or semiskilled municipal job is often far higher than the wage paid for the same jobs in private industry. Given the provisions of Sec. 206(d), a person can turn down a private industry job and still be eligible for a "last resort" job, so long as the latter pays more than the former, and in many cases it will. Table 2 shows the wages paid by several randomly selected municipalities for low-skilled jobs. As you can see these are very substantially above minimum wage levels. An unskilled laborer, earning say, \$2.50 an hour in private industry, can afford to quit, take unemployment compensation for four to six weeks (or whatever time might be needed to be eligible), then claim a last resort job paying (on municipal wage scales) \$3.50 to \$4.50 an hour, and come out way ahead.

This would show up in heightened form in any "last resort" jobs created in construction work, since Sec. 402 requires Davis-Bacon wages which in practice are set at the construction union wage scale in the nearest large city.

It is clear that in any area where municipalities or non-profit institutions pay higher scales for relatively unskilled or semi-skilled labor than does private industry, the wage scales in private industry will quickly be driven up to the higher level. Otherwise there would be a steady drain of labor away from private industry into "last resort" jobs. A new and much higher set of minimum wages would be created!

TABLE 2.—MEDIAN HOURLY WAGES IN MUNICIPAL GOVERNMENT¹

| City | Occupations | | | | |
|------------------------------------|---------------------------------|-------------------|-------------------|---------------|---|
| | Janitors, porters, and cleaners | Laborers, class A | Laborers, class B | Park laborers | Truck drivers (heavy, other than trailer) |
| Cleveland, Ohio..... | 3.83 | | 4.36 | 4.36 | 4.93 |
| Kansas City, Mo..... | 3.67 | 3.34 | 3.06 | | 4.42 |
| Atlanta, Ga..... | 3.38 | 4.16 | 3.53 | 3.68 | 4.00 |
| Portland, Oreg. ² | (4.80) | (5.17) | | (5.75) | |
| San Diego, Calif..... | 4.08 | 4.58 | | 4.18 | 5.24 |

¹ Except for Portland, the numbers are the median wages for workers in the indicated occupations based on U.S. Labor Department municipal wage surveys taken in various months during 1975.

² The data for Portland are equal to median wages as reported in September 1973, adjusted upward by 10 percent, as a "guesstimate" of the wage increase since then.

The direct and indirect effects of this on the inflationary problem would be extremely serious, once the bill was in full operation. Labor would become very scarce over a broad range of semi-skilled and unskilled jobs in private industry. Wage rates would rise sharply and prices would follow; the size of the government's job programs would grow rapidly, as workers left lower paying private jobs for the higher wages stipulated in Sec. 402.

Once you begin to ask how to correct this problem, the dilemma of any "government-as-employer-of-last-resort" provision becomes clear. As pointed out earlier, when the unemployment rate is below 5 or 5½ percent, most unemployment is not long term. Among adult males unemployment often consists of a period of four to eight weeks after a lay-off before a new job is found. Among many teenagers unemployment in such times is not a steady thing, but a period between two relatively low paying jobs. What wages do you pay in the "last resort" jobs? If you pay low enough wages so as not to attract many people from their existing jobs, you have a very unattractive program. Many private jobs are low-paying, and the only way to avoid attracting people from private industry is to

set the "last resort" wages very low indeed. But then, except in periods of high unemployment, when even very low paying jobs aren't available, who wants the program? If you set the wage somewhat higher—even if not absolutely high—it will still exceed the wages of many people with a current job in private industry. If so, it will begin to cause an exodus from private industry, and drive up wages and prices.

Table 3, based on Labor Department Surveys of area wage structures, attempts to measure how far below the prevailing (median) wage for selected low-skill occupations, wages would have to be set in the last resort jobs in order to avoid attracting large numbers of workers from private industry. The first line of numbers for each city and occupation indicates the wage discount that would have to be applied to insure that the wage did not exceed the wages of more than 10 percent of the workers in private industry. The second line shows the discount needed to keep the last-resort job from being more attractive than 20 percent of the private jobs in the same occupation. Thus, in order for a last-resort laborer's job in Buffalo not to attract more than 10 percent of laborers in private industry, it would have to

be paid at a rate of 37 percent below the area median wage for laborers. If the wage were set 28 percent below this median, it would still pay better than laborers wages received by 20 percent of the private work force.

TABLE 3.—PERCENT WAGE REDUCTION BELOW PREVAILING WAGE NEEDED TO PREVENT SPECIFIED PERCENTAGE OF WORKERS FROM LEAVING PRIVATE EMPLOYMENT; SELECTED CITIES

| City and percentage cutoff | Occupation | | |
|----------------------------|----------------------------|---------|-----------------|
| | Janitor porter and cleaner | Laborer | Shipping packer |
| Buffalo, N.Y.: | | | |
| 10..... | -18 | -32 | -37 |
| 20..... | -16 | -22 | -28 |
| York, Pa.: | | | |
| 10..... | -29 | -34 | -11 |
| 20..... | -25 | -17 | -10 |
| Cleveland, Ohio: | | | |
| 10..... | -6 | -29 | -27 |
| 20..... | 0 | -20 | -15 |
| Kansas City, Mo.: | | | |
| 10..... | -22 | -35 | -30 |
| 20..... | -13 | -21 | -21 |
| Richmond, Va.: | | | |
| 10..... | -20 | -28 | -37 |
| 20..... | -17 | -15 | -35 |
| Portland, Oreg.: | | | |
| 10..... | -13 | -31 | -21 |
| 20..... | -6 | -26 | 14 |

Source: Based on BLS area wage surveys; the 1st line for each city and occupation is the wage at the 10th percentile of workers, and the 2d line is the 20th percentile wage. Linear interpolations were used within the class intervals published by BLS.

Special public service employment during periods of recession is a useful tool of counter-cyclical policy. Government-financed summer employment for school age youths makes sense. And, in good times, public service employment, paid at unemployment compensation rates, may be the most appropriate way to provide for that relatively small number who have exhausted their unemployment compensation. (This would, however, imply unequal pay for equal work.) But the concept of government as employer of last resort is not a workable method of pushing the overall unemployment rate down to very low levels.

DEALING WITH INFLATION

I have no magic answer for how to reduce the inflation which accompanies full employment. But there are a series of steps, each of which could contribute.

1. As mentioned earlier, there should be continued emphasis on programs to make unemployed youths more qualified for the main stream job vacancies which increasingly appear as the overall unemployment rate is reduced. On an experimental basis, a government wage subsidy to employers who hire disadvantaged young workers for permanent career jobs should be tried.

2. Substantial, tough action is needed to deregulate areas of the economy where government itself stifles competition and holds up prices. Transportation is a key example.

3. Actions which reduce the competition from imports should be avoided. Import threats probably do much more than anti-trust to keep prices down.

4. That part of the bill which directs the President to develop and submit a plan for counter-cyclical employment creating measures, including public service employment, should be retained. The government as employer-of-last-resort section should be dropped. At the same time, as I indicated earlier, several other methods to help achieve low unemployment without inflation could be added: public service employment for those who have exhausted unemployment compensation; and, on an experimental basis at first, a program of wage subsidies to employers for providing long term jobs to disadvantaged youth.

5. Finally, and most importantly, we need an incomes policy. It cannot be across-the-

board wage and price controls; they can't be maintained very long, and they are ultimately far too rigid for a dynamic economy. But we do need to find a way to work out some kind of social compact, perhaps along the lines that Callaghan and Healy are trying to work out in Great Britain. In particular, any sophisticated approach to the joint attainment of full employment and price stability should incorporate use of the tax system as a means of attaining a social compact. There are a number of different alternatives, no single one of which should be locked into a long term bill like S. 50, but all of which should be part of the arsenal which a President could, from time to time, propose as part of the annual full employment and balanced growth plan. My colleague, Arthur Okun, has suggested several examples of how this might be done: in return for labor accepting a wage guideline, offer to reimburse labor, via a working man's tax cut, for any overall price increase that is out of line with the wage guideline, and finance part of the cut with a temporary surcharge on corporations; offer employers and workers an option—either to sign whatever wage contract they want or to sign a contract within the wage guidelines and receive a temporary reduction in social security payroll taxes.

S. 50 already contains an implicit, but not generally recognized directive to the President to spell out wage and price guidelines. Sec. 104, establishing the full employment and balanced growth plan, requires the President to set forth goals for "full purchasing power" at levels necessary for reaching goals of the Act. But the only way to set forth an explicit goal for the wage component of purchasing power is to stipulate a wage guideline to go with an employment target; and the only way to specify a purchasing power target for profits is to specify a set of guidelines on general price movements, to go with the wage, employment, and production targets.

RESTRUCTURING S. 50

I think that there would be merit in reorganizing the bill so that it jointly addressed the inflation and unemployment problems, and explicitly pointed in the direction of preventing the inflation acceleration that goes with low unemployment.

The planning and target-setting part of the bill should be rewritten to specify both unemployment and price stability goals: the policy goal would be to undertake those structural and incomes policies needed to approach both goals simultaneously. Many of the sections of the present bill, including the manpower training parts, would then become a means of reaching full employment without accelerating inflation. The hidden incomes policy sections should be made explicit, directing the President to develop guidelines and indicating the desirability of using tax policy as a possible adjunct to incomes policies.

Finally, the targets for unemployment and price stability should be made more flexible. The present bill sets an ultimate target of 3 percent adult unemployment which is roughly consistent with a 3½ percent overall rate if "adult" means over 18 years of age, and 4 percent if "adult" means over 21 years of age. But such targets should not be absolute. For example, in a situation like the middle of 1973, with inflation beginning to go into double digits and the adult unemployment rate at 3.8 percent, I cannot imagine that, for the year ahead, the federal government would pursue a policy of increasing budgetary stimulation or easier money in order to reach a mandated target of 3 percent. Hopefully, we would never be in that situation again. But no one can be sure in an uncertain world. As I read the present bill, after 1980 (assuming enactment in 1976) each year's target for unemployment would

have to be no higher than 3 percent (for adults), regardless of the rate of inflation. I do not think that such a rigid specification of targets each year is consistent with the purpose of the bill which is to be a long term guideline for economic policy. Nor do I think the goal for unemployment should be expressed in terms of adult unemployment. The individual distress and social problems caused by high unemployment among youth warrant attention as well as does unemployment among other workers.

Even with the specific anti-inflation measures suggested above, we do not know how low the unemployment rate might be pushed, without running into the inflation barrier. The goals set forth in the Act, therefore, must be quantitatively imprecise. I would suggest that they be rewritten in language which directs the President to present long-run plans for reducing the inflation that heretofore has accompanied low levels of unemployment and simultaneously to outline the actions needed to reduce unemployment towards the lowest rate sustainable over the long-run. The specific proposals and plans that he presents each year, in response to this directive, will in any event, be widely debated before the Congress and in the media. It is unrealistic to expect that the simple inclusion of a single numerical target for unemployment, like 3 percent, in a planning bill of this type will somehow force a President to take action to get there, regardless of the consequences.

AN AUTOMATIC MAJORITY

HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. LENT. Mr. Speaker, much ado has been made about this so-called "veto-proof" Congress. This situation, while unpleasant for some of us, is one that we all can live with. On the international level, however, another "automatic majority" exists, but this situation is one which is not tolerable, and it threatens world peace.

The majority to which I refer is the one which swings into action each time there is an opportunity in the United Nations to do something unfavorable to Israel. We are all aware of the U.N.'s blatant anti-Israel actions, such as the resolution condemning Zionism as a form of racism. My attention was recently drawn to another action, not as dramatic perhaps, but in a way just as disturbing.

Israel, despite justifiable apprehension, consented to have three members of a special committee of experts appointed by the World Health Organization—WHO—visit Israel and Israeli-administered areas for the purpose of preparing a report for the WHO's assembly. That report, surprisingly, was generally favorable to Israel, indicating that health services in Israeli-occupied Arab territories, while far from perfect, have been showing "slow but steady" improvement since 1967.

The WHO, at its annual assembly in Geneva last week, refused to consider the report by a 65-to-18 vote with 14 abstentions. The motion to table was put forward by India on behalf of the Arab nations and the group of so-called

"developing countries." The United States, of course, voted against the motion, and the U.S. representative, Dr. S. Paul Erlich, said it was the first time in his long experience "that we have failed to consider a document submitted to the assembly."

Mr. Speaker, it would be too kind to call this situation absurd. When a world health body becomes so politically motivated, there is cause for great alarm, and further room for doubt about the U.N.'s ability to cope with the massive problems facing the world today. I hope that the Congress will continue on record in favor of even-handed treatment of all nations by a body which is supposed to serve all nations.

INFLATION—ITS CAUSES AND POSSIBLE CURES

HON. BOB TRAXLER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. TRAXLER. Mr. Speaker, inflation hurts every American. In an effort to involve young citizens in finding solutions to this national problem, the Bay County Economics Club and the Second National Bank of Bay City, Mich., jointly sponsored an essay contest on "Inflation—Its Causes and Possible Cures."

Mr. Harrison Plum, secretary-treasurer of the Bay County Economics Club was kind enough to forward to me the winning essay by Mr. Ira J. Kreft, a sophomore at Alpena Community College. I found Mr. Kreft's analysis and suggestions valuable and I wanted to share them with my colleagues and all Americans.

The text of Mr. Kreft's essay follows:

INFLATION—ITS CAUSES AND POSSIBLE CURES

(By Ira J. Kreft)

WHAT IS INFLATION?

Inflation, a serious problem facing the United States, is commonly defined as a rise in the general price level or a decline in the real purchasing power of the dollar.

Inflation is measured with price indices. The three most common indices are the Consumer Price Index, which is the relative dollar cost at different points in time of a specific market basket of goods, including food, clothing, automobiles, and doctor's fees; the Wholesale Price Index, which is the relative dollar cost at different points in time of a market basket of wholesale commodities; and the GNP Implicit Price Deflator, which is the relative dollar cost at different points in time of all goods and services produced in the United States economy.

When evaluating inflation with either the Consumer or GNP Price Indexes, it must be remembered that they are overstated 1 to 1.5% because of price increases due to product improvement and government required safety and emission-control features, which are not distinguished from pure price rise.¹

WHAT ARE THE CAUSES OF INFLATION?

Inflation occurs when aggregate demand, which is all the money people, businesses and governments spend, grows more rapidly than aggregate supply, which is the nation's capacity to produce real goods and services. Once this condition exists, which is called demand-pull inflation, it is usually followed

by cost-push inflation. Cost-push inflation, which has a spiralling effect, occurs when wages increase to keep up with inflation and are followed by price increases by the employer to maintain his profit margin. This causes prices to go up in other industries because their employees want to stay ahead of inflation. The overall effect is that the employees are fighting a losing battle, because as their wages increase, so do prices.

Some of the factors that make aggregate demand grow faster than aggregate supply are consumer expectation of rising prices, excess money creation and spending by the government, and "manufactured" shortages.

In order to have cost-push inflation, labor must be able to exert pressure on the employer for wage and salary increases; and the employer must have the ability to pass the increases to the consumer in the form of higher prices.

WHAT ARE THE DANGERS OF INFLATION?

The economic progress of the United States depends upon capital investment. To maintain even a constant level of operations, ever increasing amounts of capital are needed. The usual reinvestment model is based upon the idea that depreciation will protect enough assets, by reducing income taxes, to replace fixed assets when needed; however, when inflation exists, this concept is undermined. Approximately 90% of all capital comes from reinvested profits and capital consumption allowances.² To illustrate the seriousness of the problem created by inflation, assume the following: a corporation erected a warehouse in 1940 at a cost of \$100,000 (when the GNP Implicit Price Deflator Index was 43.9) to be depreciated over its life of 20 years. If depreciation protects assets equivalent to the total of the depreciation charges, \$100,000 of assets exist in 1960 to replace the old warehouse with a new one. However, the GNP Implicit Price Deflator Index was 103.3 in 1960; consequently, a new warehouse, identical to the old one would cost \$235,300. Because of inflation, higher dividends are paid, which misleads the investor as to the company's dividend potential. Unions may be encouraged to push for wage increases, based upon inflated earnings, which the company must pass on to the consumer thus promoting cost-push inflation. The company also pays taxes on inflated earnings, that don't really exist.

If domestic inflation is greater than foreign inflation, investments will go to foreign countries and imports will be less expensive than domestic products. Inflation also involves a redistribution of income from those on fixed income, such as social security and pensions, to those on variable incomes, such as salesmen and workers whose pay is determined by cost of living escalators. If there is too great a redistribution of income, as there was in Germany following World War I, there may be social unrest and a serious threat to continuing democracy in the United States.

WHAT ARE POSSIBLE CURES?

Two basic ways of trying to bring aggregate demand into balance with aggregate supply are fiscal policy and monetary policy. Fiscal policy may involve decreased government spending, increased tax rates, or a combination of the two. This would have the effect of reducing aggregate demand. Monetary policy would involve action by the Federal Reserve System to decrease the supply of money, raise the interest rates, or a combination of the two. By making money more expensive, monetary policy has the effect of reducing long-run consumption.

The two previous measures are suitable for demand-pull inflation; however, for cost-push inflation, other measures must be used. A wage-price review board could be created, in the same fashion as utility regulatory commissions, with the power to scale down proposed increases which exceed what can be justified by economic criteria. This com-

mission would review wage and price increases in industries with market power, such as the auto industry, trucking, and heavy manufacturing. Another possible solution is to levy a tax on employers granting excessive wage and salary increases to make the employer put more pressure on labor rather than the consumer.

Recently, the use of inflation escalators, called indexation, have become popular in contractual arrangements, where the amount paid in the future is adjusted for inflation according to an index. If the entire economy, including the tax system, was based upon indexation and accompanied by strict monetary policy, inflation could be broken and as it decreased so would wages thus avoiding layoffs due to decreased demand. Any of the policies mentioned above could be used, but judgment must be used to elicit the desired effect on the economy.³

RECENT INTEREST IN APPROPRIATE, OR INTERMEDIATE TECHNOLOGY

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. BROWN of California. Mr. Speaker, over the past year the subject of intermediate technology has been frequently discussed in several committees of the Congress. The term has not been precisely defined but in general has referred to a less complex, less capital intensive, more labor intensive, frequently smaller, more decentralized, and environmentally benign type of technology appropriate to the specific needs of a community or particular area of the country or world. It is sometimes referred to as "appropriate" or "light capital" technology.

Because of the growing world pressures on energy and materials supply, the environment and capital markets resulting from growth in larger and more complex technologies, which some analysts also blame for the unique combination of inflation and unemployment which we have suffered over the past several years, strategies of encourage emphasis on intermediate technology programs have flourished. The Foreign Affairs Committee last year approved a new section to the foreign aid bill—section 107, Public Law 94-161—authorizing an intermediate technology emphasis in foreign aid. The Appropriations Committee, in the committee report accompanying the foreign assistance appropriation bill (H.R. 12203) passed March 4, 1976, said:

The Committee expects AID to more rapidly to implement section 107 of the Foreign Assistance Act, which authorized \$20 million over the next three years for activities in the field of "intermediate" or "light capital" technology.

The committee report devotes nearly four pages to the subject of intermediate technology—pages 14-15, 61-63—and should be read by those interested in a further discussion of the subject.

¹ Reynolds, Lloyd G., *Economics*, 4th. Edition, Richard D. Irwin, Inc.

² Federal Reserve System.

³ Laing, Jonathan R., "On The Escalator", The Wall Street Journal, Wednesday, March 10, 1976.

At the instigation of leading Members of Congress, the Community Services Administration has commissioned a major study of the subject, completed in February 1976, entitled "The National Center For Appropriate Technology," which may lead to additional efforts.

The House, in the ERDA authorization bill, H.R. 13350, adopted a section 111 on May 20. Section 111 directs the Administrator of ERDA to prepare a detailed proposal to carry out an intermediate technology program within ERDA, such a proposal to be submitted to the Congress with the 1977 ERDA annual report. In a similar effort, the language of the report to accompany the NSF authorization bill, H. Rept. 94-930, contains language suggesting that NSF encourage initiatives in intermediate technology research and development, as well as education.

The interest in appropriate, or intermediate technology did not, as usual, originate in the Congress. It is a genuine "grassroots" issue, but one that is rapidly reaching a higher level of awareness.

The State of California, in a move which demonstrates that States can act at least as rapidly and as effectively as the Federal Government, has established an Office of Appropriate Technology in the Office of the Governor.

In order to describe this new California office, I would like to insert in the RECORD the Executive order which established this office, and a short background paper on the subject:

EXECUTIVE ORDER NO. B-18-76

Whereas, we live today in an era of limited resources; and

Whereas, technologies must be developed which are less wasteful, less costly, less bureaucratic, and less harmful to people and the environment than the technologies of the past; and

Whereas, state government must assert leadership in developing small-scale technologies appropriate to an era of limited resources;

Now, therefore, I, Edmund G. Brown Jr., Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this order to become effective immediately:

1. There is established in the Office of Planning and Research the Office of Appropriate Technology.

2. The Office of Appropriate Technology shall assist and advise the Governor and all state agencies in developing and implementing less costly and less energy-intensive technologies of recycling, waste disposal, transportation, agriculture, energy, and building design.

3. The Office of Appropriate Technology shall be directed by the State Architect.

In witness whereof, I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 12th day of May nineteen hundred and seventy-six.

EDMUND G. BROWN, JR.,
Governor of California.

Attest:

MARCH FONG EU,
Secretary of State.

BACKGROUND PAPER, OFFICE OF APPROPRIATE TECHNOLOGY

The recognition that we live in a world of limited resources requires a conserving technology. As government tries to adapt to the new realities of diminishing resources and changing values, we must find ways to carry out our responsibilities in ways that

are less wasteful, less costly and bureaucratic, less harmful to people and our environment. We need to encourage tools, techniques and processes in our economy—as well as in our communities and institutions—that are simple, direct, small scale and inexpensive: a balanced technology that is appropriate to maintaining the health of California's people, economy, and environment.

To assist in this period of transition, the Governor is creating an Office of Appropriate Technology to act as a catalyst in the areas of job development, resource conservation, environmental protection, and community development. The actions of the office will be directed toward developing human scale technologies and ways of thinking which promote wise use of resources, more harmonious connections with the natural world, and smaller, more workable governmental and social institutions.

Government now intervenes in just about every area of people's lives and yet our problems remain unsolved. Through appropriate technology there can be less need for government intervention to control the myriad, and often unanticipated effects, of "advanced" technology. Appropriate technology is here now and can be applied to many areas of our everyday life in ways that create new and satisfying jobs, save energy, and improve the quality of life:

Inexpensive, simply constructed solar hot water heaters can greatly reduce our present dependence on natural gas and electricity.

Renewable energy sources can be put to work to heat and cool our homes and work places.

Small scale intensive agricultural and farmers markets on unused land in and around our cities can provide families with fresh vegetables and healthy exercise.

Non-polluting mini-transit systems and bicycle ways can make getting around the city easy and inexpensive.

New uses for old buildings saves money and maintains neighborhood stability.

Plumbing and sewage systems can be simplified using modern biological techniques to reduce pollution, conserve water, materials and rebuild the soil.

Use of locally available materials and careful climate-based design can reduce housing costs and improve quality through greater individual choice and diversity.

Sim Van der Ryn, State Architect, will be Director of the Office of Appropriate Technology (within OPR) assisted by staff and consultants required to carry out the functions of the office. OAT will remain small, relying on cooperative working agreements with other State agencies and the use of outside consultants on specific projects to perform most of the work.

The work program of the office will include:

Seminars featuring distinguished authorities in the field of energy, environment, economics, technology designed for State policy makers and the general public.

Demonstration projects—working prototypes illustrating various appropriate technology concepts which are self-teaching examples.

Evaluation of prototype appropriate technology for use in State projects.

Public access, educational process, information center and public events.

Advisory panels of distinguished experts to advise on application of appropriate technology to ongoing State projects in areas including alternative energy, agriculture, waste management, transportation.

Mr. Speaker, I am bringing this subject to your attention because of its growing importance, and with the hope that each Member of Congress will become interested and informed on this new approach to technological growth.

PERSONAL EXPLANATION

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mrs. SCHROEDER. Mr. Speaker, on May 21, 1975, I was absent. Had I been present I would have voted as follows:

Rollcall No. 291, "nay."

Rollcall No. 292, "yea."

Rollcall No. 293, "yea."

Rollcall No. 294, "nay."

Rollcall No. 295, "yea."

DICKINSON QUESTIONNAIRE RESULTS

HON. WILLIAM L. DICKINSON

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. DICKINSON. Mr. Speaker, each year I send an annual questionnaire to my constituents. I find the results of the questionnaire very helpful and I would like to share the results with my colleagues:

DICKINSON QUESTIONNAIRE RESULTS

"Reduce government spending" was the sentiment I noticed most while reviewing the responses to my 12th Annual Questionnaire. Over 10,000 persons responded to the poll and I am most gratified by the great interest they exhibited in the important issues facing us as a nation.

Only in defense, crime control and energy research and development did a clear majority favor spending more. About 65% felt federal spending should be reduced in every agency even if programs they personally favor might be reduced. Tax dollars should not be used to finance campaigns for the U.S. House and Senate, said 83% of the people—I agree!

In other results, less than one-third believe the news they read, see and hear is generally fair and accurate while more than half do not. The overwhelming majority think public employees should not be allowed to strike and that voluntarily unemployed persons such as strikers and college students should not get food stamps.

Personal service received from the new U.S. Postal Service was given a very negative rating. Changes must be made in the Social Security program, nearly half responded.

In foreign affairs, strong support for the C.I.A. was indicated, but about as many people think the U.S. should get out of the U.N. as think we should stay in.

RESULTS OF THE 12TH ANNUAL BILL DICKINSON QUESTIONNAIRE

[All figures expressed as percentages; because of rounding all totals will not exactly equal 100 percent]

1. Do you believe the news you read, see and hear is generally fair and accurate?

| | |
|-----------|-------|
| Yes | 33.77 |
| No | 57.65 |
| Undecided | 8.65 |

2. Should essential local, state and federal government employees such as police, firemen, sanitation workers, teachers, etc., be allowed to strike?

| | |
|-----------|-------|
| Yes | 21.91 |
| No | 73.11 |
| Undecided | 4.96 |

3. Should voluntarily unemployed persons such as college students and strikers receive food stamps?

Yes 10.58
No 85.13
Undecided 4.24

4. Should the U.S. maintain an intelligence gathering system (like the C.I.A.) in other countries?

Yes 81.84
No 13.46
Undecided 4.68

5. Do you believe the U.S. should continue to be a member of the United Nations?

Yes 42.64
No 42.20
Undecided 15.14

6. Should federal tax dollars be used to finance campaigns for the U.S. House of Representatives and the U.S. Senate?

Yes 10.58
No 82.91
Undecided 6.09

7. Do you believe the federal government should reduce spending in every federal agency even if programs you favor may be reduced?

Yes 65.28
No 28.12
Undecided 6.59

8. To eliminate political influence, in 1970 the U.S. Post Office Department was reorganized and given "independent" financial status. How would you rate the performance of this new Postal Service?

Excellent 1.12
Good 10.19
Fair 37.33
Poor 51.24

9. Last year, for the first time, the Social Security system paid out more in benefits than it received in taxes. To keep the program operational, some changes must be made. Which one of the following proposals do you prefer?

(a) Increase employee and employer Social Security taxes 15.07
(b) Decrease Social Security benefits 15.92
(c) Change the Social Security program to allow new workers to contribute to a private savings program 46.99
(d) No opinion 21.99

10. Federal spending involves your tax dollars. Should we spend more, less or the same on the following?

Defense:
More 57.99
Less 11.95
Same 30.05

Education—College Level:
More 20.37
Less 52.27
Same 27.34

Elementary and High School level:
More 35.34
Less 37.32
Same 27.14

Welfare:
More 4.06
Less 83.12
Same 12.80

Health:
More 27.41
Less 43.83
Same 28.74

Veterans benefits:
More 13.66
Less 50.52
Same 35.80

Foreign aid:

More 4.99
Less 86.27
Same 8.73

Crime control:

More 63.47
Less 13.43
Same 23.09

Highways:

More 22.06
Less 28.15
Same 49.77

Mass Transportation:

More 29.60
Less 39.11
Same 31.27

Energy Research and Development:

More 60.42
Less 17.12
Same 22.44

Environment and Conservation:

More 34.57
Less 34.04
Same 31.38

Age:

18 to 21 1.53
22 to 35 27.57
36 to 50 28.84
51 to 65 28.34
Over 65 13.20

Voting preference:

Republican 28.53
Democrat 24.49
Independent 49.96

"COAL SLURRY PIPELINE-2" ENERGY VERSUS TRANSPORTATION ISSUE

HON. JOE SKUBITZ

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. SKUBITZ. Mr. Speaker, yesterday I made a statement before the House concerning a so-called coal slurry pipeline bill, H.R. 1863, which can be found on page 15521, of the RECORD. This legislation would grant Federal powers of eminent domain to coal slurry pipelines.

Legislation to grant the Federal right of eminent domain to builders of coal slurry pipelines has been presented by its proponents as an energy measure.

It is not an energy measure. It is a transportation measure and should be so regarded by the Congress.

Coal produces energy. The vast reserves of Western low-sulfur coal hold a bright promise for the provision of a substantial portion of this Nation's energy needs.

But a coal slurry pipeline cannot produce a kilowatt of energy. The legislation before the Interior Committee simply represents a plan to superimpose an additional transportation mode on an existing system.

At present, only one—relatively small—coal slurry pipeline is in operation in the United States. Its operations are not significant to the total coal transportation picture. Yet hundreds of millions of tons of coal are transported satisfactorily, efficiently, and economically.

If no more coal slurry pipelines are built, coal will continue to be transported—even if production in the West increases many times over. Railroads

haul more than 60 percent of all the coal mined in this country. It is a profitable portion of the rail business. Testimony delivered before the Interior Committee indicates that the railroads are ready, willing and eager to haul every nugget of coal that can be produced.

So we do not need coal slurry pipelines to provide us with coal for energy. If the coal is mined, it will be moved.

The only real energy issue involved in this measure is an indirect one—the fact that the transportation of coal, however accomplished, will consume energy.

Coal slurry pipelines will consume more energy than would the use of unit trains for the same job. There are steps involved in the slurry pipeline process—pumping, dewatering, drying—which are not necessary in the movement of coal by unit train.

According to a study done for the Wyoming Department of Planning and Economic Development, the total coal slurry operation would consume about 750 Btus per ton-mile versus 300 Btus per ton-mile for unit train movement of coal.

In another study, the Hudson Institute estimated that a 1,300-mile rail operation using diesel power would be three times as energy-efficient as a 1,000-mile coal slurry pipeline using electric power.

So coal slurry pipelines are not producers of energy; they are consumers of energy—to a greater degree than the transportation mode pipeline promoters would like to supplant. Yes, I said supplant, not supplement.

Yet another misapprehension about the coal slurry pipeline is the notion that it would result in the production of less expensive energy than could be produced with the use of coal transported by rail.

Certainly, the cost of transportation will play a role in the cost of electric power produced by coal. It is a relatively small component, but it is there.

Based on all the evidence thus far produced, however, there is no valid basis for the assumption that coal slurry pipelines could transport coal more economically than unit trains. A study done for the National Science Foundation, which is a part of the Interior Committee's hearing record, has determined that it would cost twice as much to build a coal slurry pipeline as to upgrade an existing rail line for equivalent service.

The pipeline cost figure so often thrown around is an estimate of \$750 million for a 1,036-mile pipeline from Wyoming to Arkansas. Frankly, it is difficult to place too much credence in that estimate, because of the way it has been used. In one pronouncement by the promoters, the cost is pegged at \$750 million in 1975 dollars; in another, the cost is said to be \$750 million when completed at the end of the decade, assuming historical inflation trends return.

The estimate is ominously reminiscent of the estimate of \$900 million advanced in 1968 for the 850-mile Alaska oil pipeline. That estimate was inflated to \$2 billion in 1973; it is now \$7 billion and the pipeline is not completed.

Estimates of pipeline operating costs are similarly elusive. The ones advanced by proponents are obviously based on a perfect, trouble-free operation—and this is just not realistic.

The alleged pipeline cost advantage over railroads is supposed to come from the fact a high percentage of the pipeline costs will be fixed costs, while the major portion of the rail costs would be variable operating costs. Fixed costs being less directly vulnerable to inflation, the assumption is that, over a period of years, the rail would climb higher than the pipeline rate. This dependence on high inflation seems at odds with the statement I quoted earlier assuming low inflation to keep pipeline construction costs down.

It is revealing, I think, that the rate comparison most often cited by pipeline proponents is one calculated by the president of a utility corporation, not a potential pipeline operator. One would be inclined to assume such a person would have ready access to figures upon which to base computations, at least so far as his own operation goes.

Mr. Floyd Lewis, president of Middle South Utilities, on page 749 of the Interior Hearings Report on Coal Slurry Pipeline Legislation (Serial No. 94-8) cited the comparison that \$14 billion would be saved over 30 years by the use of pipeline-delivered coal in preference to rail-delivered coal.

Mr. Lewis does not document how he arrived at such figures and as far as I can perceive, the figures were arrived at by plucking from the air a pipeline rate of \$7 per ton versus a rail rate of \$11.80 per ton. Neither figure has any validity. Most authorities believe the initial pipeline rate would be higher than the initial rail rate.

The error was then compounded by applying unequal inflation percentages to the two rates. Four percent was applied to a small percentage of the pipeline rate, producing a rate, after 30 years of \$8.40 per ton. Five percent was applied to the entire rail rate—not a percentage thereof—to produce a rate, after 30 years, of more than \$50 per ton.

All this proves, I submit, is that if you allow one team to choose the ground, make the rules and apply them capriciously, you should not be surprised at the final score. After all, is it not significant that the individual who supplied the figures will be a huge consumer of coal who is interested in keeping the price of coal as low as possible? Naturally, in the make-believe land of speculation one in Mr. Lewis' position would like to have the threat of potential competition and keep the railroads from raising their rates.

To sum up, I think it is clear that in the legislation under consideration we are not talking about a measure to increase the supply of energy—it would not do that. We are not talking about a measure to fill an imagined gap in the transportation system—there is no gap. We are not talking about a measure to reduce the cost of energy—because there is no reason to believe that would happen.

We are, I suggest, talking about legislation to grant a special and totally unprecedented privilege to a small group of promoters seeking to use our legitimate concern about the Nation's energy needs as an opportunity to pocket some fast bucks.

In my next statement, which will be Tuesday, June 1, 1976, I shall speak to "Rail Transportation of Coal—a Backdrop to the Coal Slurry Pipeline Issue."

TWO HUNDRED YEARS AGO TODAY

HON. CHARLES E. WIGGINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. WIGGINS. Mr. Speaker, 200 years ago, on May 30, 1776, the Continental Congress accepted the recommendation of one of its committees and resolved to advise the Colonies to once again regulate the price of salt. The committee had reported that "avaricious, ill designing men," taking advantage of the earlier removal of price controls, were "extort(ing) from the people a most exorbitant price for salt." Congress expected the legislatures of the respective Colonies to pass the necessary pricing regulations, taking care that suppliers were assured of sufficient profit so that they would not be discouraged from importing their product.

HELPING THE POOR HELP THEMSELVES—NEW DIRECTIONS

HON. CLARENCE D. LONG

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. LONG of Maryland. Mr. Speaker, a generation ago the Earth was inhabited by about 2.5 billion people, of whom almost a billion were the poor of the underdeveloped lands. Partly in pity, partly in alarm, and imagining that a lesson could be learned from the swift success of the Marshall plan in Europe, the United States launched a foreign aid program for the underdeveloped nations.

In the years since, \$200 billion were given, loaned and reloaned for economic aid and military aid. Counting the interest paid on what we borrowed to give and lend, the cost of foreign aid to the United States has totaled more than a quarter of a trillion dollars.

The results of this massive outlay are sufficiently known: There are now 4 billion people, of which about 1½ billion are poor. Although per capita income has risen here and there, frequently quit apart from foreign aid, any journey into the villages and the countryside will reveal that the poor are not only still with us but have grown with the population, which itself is proliferating to the extent that another century may see the Earth so crowded, so depleted of minerals and fossil fuels, so fouled in its water and air, so torn with misery and hatred that the present may well be looked back upon as the good old days.

What to do? There is much urging that our foreign aid has failed because we have not spent nearly enough. Yet a little scribbling on an envelope can demonstrate that no scale of conventional aid

could be sufficient to raise the world's poor by a quantum margin. One development project, proudly aimed at raising the income level of 11,000 poor families, is scheduled to cost \$1,000 per family. At this rate, it would cost \$300 billion—a hundred times what could be realistically forthcoming—to reach the majority of poor in the non-Communist developing world.

At the same time it has dawned on many that foreign aid has not fulfilled its promise, so are being glimpsed the limits on ability to continue foreign aid. The huge deficits, the inflation of prices and interest, the shortages of energy, the destruction of nature's heritage are all evidence that the shortage of capital in the developed nations must inevitably lead to a new and more restrictive philosophy of foreign aid.

Sooner or later a choice must be made—and better that it be sooner. On the one hand, we can let foreign aid continue to discredit itself through its failures and its inequities. On the other hand, we can try something new, or almost new—actually something so old that it has been rediscovered and given a new name: "Intermediate technology" or "appropriate technology" or, as I call it, "light capital technology."

Heavy capital aid has heretofore been stressed partly out of sophistry and inertia, but also because it is profitable to politically influential firms. It is also enticing for the ruling elites in the recipient nations because of the money to be made on port developments, airport construction, dams, steel mills and similar projects, and partly for this, U.S. Government officials have found it a useful diplomatic tool. To large numbers of the aid bureaucracy and the professors in the growth field, it has been the only kind of technology in which they had any expertise. You teach what you know.

The U.S. philosophy of growth, thus oversold to the developing world, is one of bigness, speed, complexity, and disregard for what it is doing to the Earth, the water, and the air. It is beginning to dawn on thoughtful people—even Presidential candidates and Congressmen—that a new philosophy of growth is needed, even for the developed nations. Leaders of developing countries, of course, will be slow to welcome the proposition that now the United States and Western Europe have achieved industrial greatness, the latecomers should accept a permanent role of inferiority. No role, however, need be permanent. Whatever the ultimate goal, it is plain commonsense that before the developing countries can run, they must walk. And to get from a crawl to a walk, they must first try light capital technologies.

The Congress has made clear through authorizing legislation and through Appropriations Committee report language that it views light capital technology as a new and important focus of U.S. foreign aid and development policy.

In section 107 of the Foreign Assistance Act, Congress has authorized the allocation of \$20 million for a private sector effort in the development and dissemination of light capital technologies, and the fiscal year 1976 Appropriations Committee report on foreign aid

directs AID to move rapidly to implement this program with the aid of small, innovative organizations and without dissipating the \$20 million in overhead of contracting organizations or of AID. The fiscal year 1977 Appropriations Committee report on foreign aid appropriations states that light capital technology activities are expected eventually to expand beyond the \$20 million under section 107 and that the ultimate goal should be endogenous development in poor nations.

An amendment to the Inter-American Development Bank authorization bill and Appropriations Committee report language direct the U.S. representatives to the multilateral development banks to take leadership in making light capital technologies a focus of the multilateral banks' development activities and in allocating a steadily increasing share of the banks' resources to light capital activities.

The Energy Research and Development Administration authorization bill—reported to the House—urges ERDA to focus on intermediate technologies.

Other report language and views go on to direct that innovative credit institutions be created to provide small loans to large numbers of small farmers and craftsmen. "AID should focus on generating attitudes, abilities, and institutions in poor countries to make appropriate technologies 'home-grown' and 'home-created' capital and thus with the aim of making economic development endogenous rather than exogenous."

Light capital technologies "should be produced within the poor countries themselves, again through techniques emphasizing labor and the saving of capital. Home-grown technology not only minimizes the need for foreign aid, but, more importantly, it creates jobs in towns and smaller cities and generates the income to buy the greater output of farm and industry.

"Home-grown technology also creates a body of skills which are needed for maintenance and repair. It means a growing number of entrepreneurs close enough to the production process to constitute a new class of inventors such as the United States generated in our own Eli Whitney—the cotton gin—Isaac Singer—the sewing machine—Cyrus McCormick—the reaper—and John Deere—the steel plow."

AID must confer prestige on those who work in light capital technologies so that those involved will have a career interest in promoting this approach.

National appropriate technology institutes in developing countries should be encouraged to help institutionalize the development of appropriate technologies in poor nations. Regional appropriate technology institutes should be developed to encourage quicker communication between and among developing countries with similar soil, climatic, and other conditions.

So far as multilateral banks are concerned, the fiscal year 1977 Appropriations Committee report on foreign aid states that the committee strongly reiterates its view that activities in the field of intermediate or appropriate or

light capital technology be a focus of activities in all sectors by the multilateral development banks. Further, the committee expects to receive responses from the U.S. representatives of these institutions regarding the banks' activities to date and their program for the future in light capital technology. These responses are expected to include a policy declaration on light capital technology, details on past and proposed activities and pilot projects, and a timetable according to which a steadily increasing share of the institutions' resources will be directed toward light capital activities.

These are broad policy outlines but the extent and success of the program will depend on the answers to a number of questions.

First. What kind of organization will be set up to carry out the section 107 intermediate technology program?

Second. How will the multilateral banks respond to the directions given to our U.S. representatives to take leadership in making light capital technology a focus of the banks' activities and to allocate increasing shares of banks' resources to light capital technology?

Third. How can political leaders, entrepreneurs, and tillers of the soil in developing countries be induced to embrace light capital technology?

Fourth. What credit institutions can be set up to provide the small loans and the appropriate technological guidance?

Fifth. What should the role of developed nations be in providing ideas, materials, and equipment, without, at the same time, stifling efforts of the developing nations gradually to make light capital technology home grown?

Sixth. Are developing nations capable of home-grown technologies?

Seventh. How can various technology programs in different industries and nations be coordinated and cross-fertilized?

Eighth. How big a program should be envisioned? Is bigness a threat to a program whose philosophy is "small is beautiful"?

Ninth. What is the role of sophisticated capital infrastructure in a growing light capital technology? Complementary or competitive? Which comes first?

Can this new approach be expected to succeed? Who can say, after so many past hopes and promises have left us with little beside the hope that the promises will be forgotten?

But this much can be said.

The resources to be committed are small.

Light capital technology supplements, rather than displaces, the approaches of the past.

It builds on what we have learned about human nature—that the human spirit thrives on its own accomplishments, and shrivels when it must live at the indulgence of others, however wise or well-meaning.

There are vast, untapped resources of ingenuity and effort in the lesser developed world ready to be tapped.

Light capital technology offers a new hope at a time of despair.

If ever mankind needed hope, it is now.

ACHIEVEMENTS OF TWO REPORTERS

HON. LESTER L. WOLFF

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. WOLFF. Mr. Speaker, the New York Daily News, one of the newspapers that serves my district, can take pride in the achievements of two of its reporters who have received recent wide recognition for their series on child care in New York City. Stewart Ain, a constituent of mine, and William Heffernan of the News spent 3 months planning and developing their series on child care, and their diligence and professionalism has won deserved recognition. The six-part series on child care won an honorable mention from the Robert F. Kennedy Journalism Awards. It was cited from out of 500 entries from across the United States. It was cited for a special achievement award by the Deadline Club, the New York City chapter of Sigma Delta Chi, which is the society of professional journalists. It has won an honorable mention from the Newspaper Guild's Heywood Brown Award. It was runner-up in the public service media award of the New York chapter of the Public Relations Society of America and it was cited by the Women's Press Club in New York.

This is quite a list, and Mr. Ain and Mr. Heffernan have a right to be proud of the series. It is journalism at its best, and it is a pleasure for me to join with many others in applauding Stewart Ain and William Heffernan.

LET US STOP THE REVOLVING DOOR AT FEA

HON. FLOYD J. FITHIAN

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. FITHIAN. Mr. Speaker, this Nation today faces a crisis in confidence—confidence in Government. Americans, I believe, want to have faith in their Government and their elected officials. They are, however, consistently confronted with charges of conflict of interest.

In one bureaucracy after another, it becomes evident that high ranking Government officials who are now making rules and guidelines for the sale of various commodities worked for the companies they now regulate. Many of these high ranking bureaucrats then leave Government service to take lucrative jobs in those regulated industries. The revolving door—business to Government to business—simply does not serve the public interest.

The revolving door bureaucrat might well be partial to his former or future employers, and might even be swayed by the prospects of eventual employment in a regulated industry. Steps must be taken to prevent potential conflict of interest in Government service.

The laundry list of bureaucratic agencies which have figured prominently in the business-Government-business shuffle reads like a Who's Who of Bureaucrats. Agencies such as the Food and Drug Administration, the Federal Trade Commission, Environmental Protection Agency, the Federal Power Commission, Security and Exchange Commission, and countless other agencies and Government departments have found themselves caught in the revolving door.

The revolving door, however, has been most obvious in the field of energy policy and energy regulation, especially the Federal Energy Administration. It is difficult to distinguish between the administration's proposals and policies, and the self-interested concepts put forth by the oil industry. Administration policies are usually greeted by cheers from the big oil magnates. Is it a coincidence that many former employees of oil companies now occupy key decisionmaking positions in Government agencies, including the FEA?

These oil bureaucrats exercise responsibilities that bring them into daily contact with the companies they regulate. They assist in the development of energy policy, supervise substantial Federal budgets, administer the regulations which implement policy, and make key decisions on adjustments and exemptions for various industries.

At the Federal Energy Administration, dozens of employees have ties to the major oil companies, as well as the smaller "independents." The Government Accounting Office's report to Senator ABUOUREK last year indicated that FEA had 65 individuals, at GS-13 level and above, with ties to oil companies. One of the Nation's largest companies—Exxon—is also No. 1 in former employees working for the Federal Government.

The restrictions of section 207 of title 18 of the criminal code prohibit any former officer or employee of the Federal Government from participating in a matter in which he has involved himself while in Government service for at least 1 year after leaving the Government. Despite this criminal statute, the revolving door swings steadily between Government and business.

Today I will offer an amendment to H.R. 12169, the bill to extend the life of the Federal Energy Administration. This amendment would expand the 1-year limitation to 3 years. Thus it would prevent a Federal employee who goes to work for a company regulated by FEA, from using his influence in Government on his employers behalf, for a period of 3 years. By stretching the limit from 1 to 3 years, it is hoped that conflicts of interest could be reduced to a bare minimum, that governmental regulatory policies would be less influenced by the industrial giants they regulate, and the public interest would be placed first, not second, or last.

I firmly believe that public faith and public trust in Government would be partially restored if we can close the revolving door between Government and business. By making it more difficult to move from Government to business, it would also indirectly discourage business employees from taking temporary

positions with the Government that are no more than way stations between jobs in regulated industries.

I ask that my colleagues in the House join with me today to strike a major blow for confidence in Government by stopping the revolving door at the Federal Energy Administration.

HOUSING FOR RURAL PEOPLE

HON. LES AU COIN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. AuCOIN. Mr. Speaker, recently the Rural Housing Alliance held a conference on rural housing in Portland, Ore. The conference was attended by 150 people from Oregon, Washington, and Idaho. Mr. Clay Cochran, executive director of the Rural Housing Alliance, gave the keynote address at that conference.

I found Mr. Cochran's comments interesting and provocative and, as our Nation continues its effort to devise a viable national housing policy, I would like to share them with my colleagues:

HOUSING FOR RURAL PEOPLE

(By Clay L. Cochran)

The Rural Housing Alliance¹ was organized in 1966 and opened its first office in January 1967. Our original emphasis was on self help housing for farm workers. Before the first year was out, it was apparent that the fragile support for self help housing was crumbling under the impact of the cost of the War against Vietnam. It became apparent that, useful as self help might be, not much would be accomplished without some commitment to housing rural people in any way whatever. So we broadened our agenda to include the total rural housing problem and called a meeting, the first National Rural Housing Conference. That conference not only laid out a rough agenda for rural housing, it produced a platform for the future entitled, "People Have a Right" to decent housing. The conferees also called for the creation of a continuing lobbying organization to fight for new legislation and money. That organization is the National Rural Housing Coalition with which many of you are acquainted and to which I hope most of you belong.

Both the Rural Housing Alliance and the National Rural Housing Coalition are membership organizations subject to the control of dues-paying members. RHA is supported by a modest amount of income derived from the sale of literature, dues and funds from the Department of Labor. The Coalition is totally dependent on non-tax-deductible funds because it is a lobby. It supports itself on dues, sales of informational materials and services, and gifts which are not tax deductible.

The \$15 per year for RHA dues are minimal and provide a subscription to The RHA Reporter, a monthly, and the right to a free copy of most of the literature we produce, along with the opportunity to help shape national housing policy in an organized manner. The coalition dues are \$10 to \$49 per year depending on type of membership, and the cost of its excellent weekly, The Congressional Round-Up, is \$25 for individuals and \$100 for organizations. Any one genuinely concerned with rural housing should be a contributor to the Coalition and RHA, but the contributions to the Coalition should be

as high as you can make them because contributions and subscriptions to its materials are its life blood.

The struggle for decent housing has gone on for a long time and this is no time to adjourn for tea. Please consider becoming a part of both organizations if you are not already so. In Cushing Dolbeare, the Executive Secretary of the Coalition, rural people have a spokesperson in Washington and indeed all over the country whose dedication, intelligence and knowledge are rare indeed. Sometimes her pay is six months overdue.

When we started nearly 10 years ago there was nothing which could be remotely described as a rural housing movement. Indeed, although the cold figures had lain on the table for many years, few people realized that nearly two-thirds of the substandard housing in this country was located outside metropolitan areas, i.e., it was rural. In the intervening 10 years we have at least made it clear that there is a terrible rural housing problem and that the existing programs are not adequate to deal with it despite all the improvements we have made in this period.

WHY AFFLUENCE AND LEAKY SHACKS?

Why, we ask ourselves, should the richest nation on the earth, containing 6% of the world's population and consuming 40% of its energy each year, have so many people living in housing which is bad for their health, a danger to their neighbors, and degrading to the human spirit? The answer is relatively simple. The wealth in this enormously rich nation is maldistributed and millions of those at the bottom of the income pyramid just don't get enough income to make it possible for them to purchase decent housing. The time when people could squat on a piece of land and build their own house from local materials is long gone, partly because somebody owns everything, partly because in most areas we do not permit that kind of housing.

WE WANT THE POOR TO GET OFF THE EARTH

In the process of "improving standards" (sometimes for the consumer, sometimes for his neighbor and frequently for his lender), we have raised the permissible standards for housing, water and sanitation until we have priced millions of people out of the system. In most areas now we do not permit the poor to house themselves, and we refuse to establish policies to provide whatever assistance they need to help themselves. In simple truth, we have told them to get lost, to get off the earth.

REDISTRIBUTE INCOME OR SUBSIDIZE

If we are going to solve the housing problem, we either have to redistribute wealth and income directly, or we must do it indirectly through the transfer of income or, in the case of housing, housing subsidies.

This we refuse to do on any scale under one pretext or another.

It is not, God knows, that we are opposed to public subsidies. In the next Fiscal Year, the Federal government will make available somewhere in the neighborhood of \$17 billion in housing subsidies.²

But to whom do we distribute this subsidy? Is it true that the poor are "eating up the seed corn" as the propagandists for the privileged so constantly fear? Hardly.

First, I need to make sure that you understand what we mean by "tax expenditures." It is a relatively new concept. A tax expenditure is money which the government deliberately does not collect; it allows a taxpayer under certain circumstances to keep money which would otherwise go for taxes. It is a staggering source of concealed subsidies in our system.

WHO GETS THE SUBSIDIES?

For FY 1977 the total Federal subsidy for housing will be about \$17 billion. About \$3

¹Footnotes at end of article.

billion of this is what most people think of as housing subsidies, that \$3 billion which winds its tortuous way through the rhetoric and tears of the Congress covering the cost of subsidized housing going back 30 years. The other \$14 billion is in the form of tax expenditures about which nobody says hardly a word. And who gets that \$14 billion?

HOUSING-RELATED TAX EXPENDITURES, 1977

(Dollars in millions)

| | Individual | Corporate | Total |
|---|------------|-----------|---------|
| Deductibility of mortgage interest on owner-occupied homes | \$4,710 | | \$4,710 |
| Deductibility of property taxes on owner-occupied homes | 3,825 | | 3,825 |
| Financial institutions, excess bad debt reserves | | 570 | 570 |
| Exclusion of interest on State and local debt (30 percent of total tax expenditure) | 417 | 945 | 1,362 |
| Tax credit for purchase of new home, as amended by Public Law 94-45 | 100 | | 100 |
| Depreciation of rental housing in excess of straight line | 455 | 125 | 580 |
| Expensing of construction period interest and taxes | 570 | 1,065 | 1,635 |
| Deferral of capital gain on home sales | 890 | | 890 |
| Housing rehabilitation: 5-yr amortization | 40 | 25 | 65 |
| Exclusion of capital gain on home sales if over 65 | 50 | | 50 |
| Total | 11,057 | 2,730 | 13,787 |

Note: The Budget for fiscal year 1977 shows that tax expenditures for mortgage interest and property tax deductions are an estimated \$8,500,000,000, and direct housing subsidies are \$4,300,000,000.

Source: Table F-1, Special Analyses: Budget for Fiscal Year 1977.

The top 1% in income—those with incomes of \$50,000 a year and above—will get 10% of all housing subsidies; the bottom 14% in income—those with \$3,000 a year and below—will get 7% of the subsidies. To put it another way, the bottom half of the population in income gets a quarter of the total tax subsidy.

Ninety percent of the top 1% are subsidized on their housing. Less than 10% of the lower income people get a housing subsidy.

SUBSIDIZE THE RICH—DON'T CODDLE THE POOR

So we not only have a shocking and ineffectual maldistribution of income in this country which makes it impossible for many lower income people to afford decent housing, but we aggravate that maldistribution by enormous subsidies to the middle and upper income groups through tax privileges.

People are getting a lot of fun out of saying, "there is no such thing as a free lunch," but we had better laugh with some caution because, although a society as a whole may get no free lunch, there are a lot of individuals who hardly eat anything but social manna.

But in trying to figure out why we have a housing problem, we find more than maldistribution of income and the maldistribution of Federal subsidies. The game is rigged better than that.

ON THE SAD STORY OF THE FEDERAL TAX SYSTEM

Since World War II, by multifarious and not infrequently nefarious devices, we have steadily lowered the tax rates on corporations and the well-to-do, and raised Federal taxes on moderate and low income people, specifically via the Social Security tax. This has not only increased the relative burden on lower income people directly, but indirectly because business passes on its share of those taxes in prices. But worse than that: In these 3 decades, by cutting Federal taxes on one excuse or another—like encouraging investment, a favorite excuse—we have forced the state and local taxing systems to bear an intolerable proportion of the total

costs of government. And how do the state and local governments collect taxes? Mostly by sales taxes and property taxes.

THE BURDEN OF LOCAL PROPERTY TAXES

Local property taxes are so high in many places that if we gave a family a decent home, they could not keep it because they could not pay the cost of utilities and property taxes. Those same property taxes on well-to-do people are not a burden. In the first place, they can pay them without missing a cocktail a year; in the second place, they deduct them from their income taxes and end up paying as little as 30 cents on the dollar, while the poor person is paying 100 great big round coppers on the dollar.

The system is rigged against moderate and low income people on housing. Year ago, Secretary Romney said 80% of the American families could no longer afford a new home. I think that was true then, and is more true now. I need not remind you that the cost of utilities has been skyrocketing since then, so that the cost in some areas is a greater burden than local taxes. My own electric bill—for the same usage—has more than doubled, and my gas bill has nearly tripled.

METROPOLLYANNA

Why should the housing problem for rural people, whether it is the cost of buying a home or the cost of rent, be proportionately so much worse than in the cities? First, because the incomes of rural people are only about 75% of urban people, and the maldistribution is worse; and that income and the maldistribution of it, including welfare aid, is a product of a very significant influence in our society, one which I call metropollyanna.

Metropollyanna is the belief, usually unspoken, that sooner or later all of the people in small towns and rural areas are going to move to the city and live happily ever after. As long as people in our society believe that the problems of rural people can be solved if they move to town, just so long will we be able to keep our conscience clean by not thinking about their problems while they live in rural areas.

The belief in metropollyanna is as real as anything you ever heard of, and it stands in the way of everything we do, not only in housing but in education, health, public transportation.... you name it.... in rural areas. Worst of all, people who believe in metropollyanna are like "Typhoid Mary's," i.e., they don't know they are sick and doing terrible things to people around them. It is possible to run a test on Mary, but we have not yet figured out a way to prove to a believer in metropollyanna that he has a bad infection he should do something about. Sadly enough, many if not most small town and rural people also believe in metropollyanna. It's a plague!

WHERE DO WE GO FROM HERE?

So where do we go from here? Right on down the road we've been stumbling on for 10 years!

We have to continue to study the system, criticize it, hustle it where we can, and demand that changes be made both in people's thinking and in the distribution of resources.

I give you one firm, undeviating absolute truth today: The housing problem is a political problem. It was created by the system, and it can only be cured that way. The housing problem can be cured only in the Congress and the State legislatures and the county courthouse and city hall. If you look somewhere else, you are just playing with yourself. Have fun!

THE HIGH ROAD AND THE LOW ROAD

In working on the rural housing problem we learned to roughly segregate parts of the program. We refer to "the high road and the low road." The high road is what we should do as a society. The low road is what we may be able to do this year, puttering and patching.

On the high road, we must continue to insist that people have a right to decent

housing and to the right to own their own home, and create programs which make that possible. We need to expand existing programs to that end, in HUD and FmHA—mostly FmHA, because HUD does not do much outside the larger towns. We also need the RHA program of lending money for home ownership at low rates of interest, but also allowing postponement of payment on a second trust until the family can afford to make the payments. And we need the Emergency Rural Housing bill to establish a housing program patterned after the Rural Electrification Administration program: consumer controlled, building housing and selling or renting it at prices people can pay without starving the kids, and solving the problem in 5 years.

That's the high road... or at least it is the high road as we see it now. We keep learning.

THE LOW ROAD

The low road this year is money, appropriations and loan authorizations and the use of existing programs.

This is the fourth straight year that the administration has tried to kill the farm labor housing program, the one which permits an inadequate 90% grant and a 10% loan at 1% interest. We must save and expand that program.

Of course, Mister Ford says that he has a substitute for it, the Section 8 program, but he also says that by the end of FY 1977 he is going to produce a total of 4,000 new Section 8 units! At best, we could expect a quarter of those in rural areas.

For the third year, the administration has tried to kill the self help housing program. They say it is not cost effective. It costs too much per unit for TA. But they make no effort to reduce those costs, much of them buried in FmHA's inadequate administrative budget or its recalcitrance at the state and local level—not everywhere, but plenty where. And the administration's Mister Lynn, the late local genius at HUD, apparently missed part of his arithmetic lessons because he can add up the TA costs but he can't add up the savings to the government from the reduced cost of interest subsidies. I think we should give up on him, but not on the self help program.

THE LOW ROAD IS A HARD ROAD

The trouble with the low road, as Cushing Dolbeare has observed in her quiet way, is that we go on fighting the same battles over and over again, year after year, in the Committees, the Congress, the administration, and the courts. It's like having to run our legs off to stay in the same place.

But, we still have to fight to get an adequate FmHA staff not only to expand the program but to keep it from getting into trouble with packagers and delinquencies. Last year, Congress thought it had provided 1,000 new regular positions, but the administration managed to cut that to 400, plus 200 part-timers and another 100 temporaries.

WE MUST JEOPARDIZE THE MORAL FIBRE OF THE POOR

We are going to try again to get Section 504 grants for rural people, home repair grants. Those grants were knocked out in 1966 by one Congressman who feared that grants to the rural poor would undermine their moral fibre. I remind you of those figures in the 1% who get 10% of all the tax expenditure subsidies. One has to admire the rich for the strength of their moral fibre, and pity the poor whose moral fibre is so fragile they can hardly eat right without putting it in jeopardy. Lower income people in the cities can get rehab grants, so they must either have better moral fibre or the Appropriations Committees which control their funds must be irresponsible.

Anyway, we want those rehab grants, and I say to you that any single Congressman or Senator from this area can get them for us if he understood and wanted to. Try it.

THE SORRY TALE OF RENT SUPPLEMENTS

We have already been licked for two years on rent supplements which we hoped, this year alone, would give us 7,500 low rent units in rural America. First the administration said that it was not enough for Congress to pass a law, that it also had to give them specific appropriation language. This was nonsense, but the Congress obediently did as it was told the second year. Now the administration says it still will not provide rent supplements because it likes Section 8 better.

So last week, for the third time, we went to court on rent supplements. We beat the administration on the 502 interest credit program and saved that billion dollars a year; we forced them to put out the farm labor housing money one year; and now it is rent supplements. (No wonder that Nixon-dominated Supreme Court is trying to shut the people out of the Federal courts.) And, we are confident we will win. All we have lost is two years and a little of our faith in the system.

Look again at those figures. Rent supplements would have given us 7,500 units this year alone, compared to the total of 4,000 Section 8 units promised by HUD through next year. Now do you understand why they like Section 8 and dislike rent supplements?

THERE IS NO SUBSTITUTE FOR PUBLIC HOUSING

And we continued to fight for the restoration of the public housing program. With limited success so far, but there is nothing wrong with the public housing program, and there really is no substitute for it in housing low income people. That's why it was done in. Sure there were some monstrous failures in some of the larger cities, but these were human errors and were made in an effort to hold down costs. Just because a program slips occasionally is no grounds for abandoning it. If that were true, we would all have learned to weave cocoons long ago and would be resting safely underground somewhere vegetating until the trumpets sound utopia.

IN CONCLUSION

The national organizations in the rural housing field, the Rural Housing Alliance, the Housing Assistance Council, the National Rural Housing Coalition are not great powerful groups despite what the trailer shack dealers said last year. We cannot finance elections and throw money around or launch big propaganda campaigns to show people the light. But you must believe me when I say that regardless of where people come from they can understand facts, and analysis based on facts, and they can take action on things that seem decent and make sense. And that is the way we have come—that road through a couple of dozen amendments to the law (some minuscule in importance, some important). We have come on the basis of action-oriented research, on holding up the facts to view, on pleading for equity and justice.

But there is a limit to what can be done in Washington. Members of Congress are far more interested in what the folks back home say than they are in what we say. And that's where housing loses out. The folks back home are not talking to the Congress, or it is the wrong folks. So that Congress feels that helping people get housing is a political liability. They vote right often, feeling in their guts that they are jeopardizing their jobs.

Nothing much is going to change until the people in small towns and rural areas and the great central cities do their work, until they ask that things be done so that the Congress knows a lot of people care . . . understand and care.

We do, indeed, need to send some messages to Washington on the right of people to decent housing they can afford to pay for.

Few good things in this world come big and dramatic. They come slow and hard. "It is not, as we know from experience, too hard to gain an inch here and an inch there, and

these inches becomes feet and the feet become yards and this is the road we travel."

FOOTNOTES

¹ Originally called the International Self Help Housing Association, a creation of the American Friends Service Committee based on the early work done in the San Joaquin Valley by Bard McAllister and Howard Washburn, and traceable in a clear line back to the Self Help Housing program in Nova Scotia, the program of the Extension Service of St. Francis Xavier University.

² Aside from the fact that millions of the poorly housed are old or disabled, or they are children without a practicing father.

³ Don't be frightened by that figure; it is only one cent of each dollar of the Gross National Product.

⁴ Known to our fathers as "feeding the birds through the horses."

⁵ Cushing Dolbeare, Cherry Hill, N.J., March 1976.

MONTGOMERY WARD & CO. PROMOTES 21-DAY FLAG SALUTE

HON. ROBERT MCCLORY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. MCCLORY. Mr. Speaker, in a little more than 2 weeks—Monday, June 14—the Nation will celebrate Flag Day. The flag of a nation is as much a part of its identity as its name. Those who seek to defile us, haul it down. Those who seek to honor us, honor it.

And no American can ever forget the exaltation of the flag raising February 19, 1945, atop Mount Suribachi on Iwo Jima by four gallant U.S. Marines who literally fought their way to the summit. As a photograph, and now a statue near Fort Myer in northern Virginia, it says better than words what the flag as a symbol means to a nation and to its people.

Mr. Speaker, in honor of the Bicentennial, Montgomery Ward & Co., a Bicentennial Corporation by designation of the American Revolution Bicentennial Administration—ARBA—is promoting a 21-day flag salute in the 3-week period between Flag Day and July Fourth.

This special commemoration of our Nation's 200th birthday has been recognized as an "Official Bicentennial Event" by the ARBA.

By flying the flag daily during those 21 days, all Americans can participate in a personal way in the Bicentennial, a proclamation of pride in where we have been as a country and where we are going during the third century of our life as a free and independent nation.

Montgomery Ward is a national organization headquartered in Chicago. Many hundreds of my constituents are employed there. It has branch outlets in my district and Leo Schoenhofen, board chairman of MARCOR, Inc., parent company of Ward's, and Edward S. Donnell, board chairman of Montgomery Ward, both are constituents of mine.

Managers of Montgomery Ward stores in 2,300 communities are offering to assist local Bicentennial committees and other organizations in planning Flag Day and 21-day flag salute programs.

The company also has made available

to all Members of Congress decorative flag standards for desk display. A miniature American flag and a miniature Bicentennial flag flank a gilt American eagle.

Mr. Speaker, I wish to thank Montgomery Ward, its officers and employees, and to congratulate them for their contributions to our Bicentennial and to Flag Day.

THE SECOND WAR BETWEEN THE STATES—PART VIII

HON. MICHAEL HARRINGTON

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. HARRINGTON. Mr. Speaker, today I am inserting the last of an eight-part series concerning regional economic development which appeared in the May 17, 1976, edition of Business Week. This final segment discusses some of the steps that should be taken in order to close the growing economic gap between the South and the industrialized North, and avoid a sectional conflict between these two regions.

By entering this excellent series into the Record, I have attempted to demonstrate the growing regional crisis that currently exists in the United States, and the need for comprehensive policy to address it. As the wealthiest Nation in the world, the United States now has the means with which to solve its regional imbalances. If the problem continues unchecked, however, even our abundant resources will not be able to reverse a trend that threatens to wreak havoc on all sectors of the American economy.

The text of the eighth installment follows:

A POLICY FOR DOMESTIC DETENTE

The meteoric rise of Georgia's Jimmy Carter, based on appeal to voters of all races and regions, is clear evidence that the rapid rise of the South and the concomitant decline of the North has changed the face of U.S. politics. The critical question for the nation, however, is when this phenomenon will change the content of public policy.

If the war between the states is to be avoided, then the nation must embark on a path that will minimize the problems of "creative destruction," caused by the growth of the South and most experts would agree that the major steps to be taken, some of which may be unpleasant, include the following:

Federal policy's uneven impact on the various regions must be reviewed and redirected toward slow-growth areas.

"It is necessary," says University of Texas economist Bernard Weinstein, an expatriate from the State University of New York, "to find out just who is sending what to whom. The whole slew of federal programs must be reviewed in terms of whether the North is still subsidizing the South." Virtually all experts would agree that the South's need for net subsidies has long since passed, and most favor a more even-handed policy. Weinstein, among others, thinks it is time that the pendulum swing. "The South should be subsidizing the North," he says.

The North and Far West must cut back selected services and slim their fiscal profile.

Even if federal policy is gradually switched back toward the slower-growth regions, the broad underlying shift of economic activity would require a careful pruning of public

outlays. New York City, for example, has maintained a system of tuition-free colleges despite the fact that most private and state universities have more than tripled their tuition charges in the last 20 years. "A city ought not to be involved in a university," says Roy Bahl of Syracuse University, "though at one time, New York's tax base could afford it." On the other hand, he cautions, service cuts can be pushed too far. "A cut in services makes the area less attractive and could accentuate the decline."

The entire fabric of state-local relationships may have to be altered.

With tax bases dwindling, more and more cities find it difficult to maintain services adequately, especially education. New Jersey's Supreme Court found last year that inequities that had arisen in that state's school system could be remedied only by uniform state financing. This clearly signals less local autonomy in education. In other areas, public employee wages and pensions have spiraled out of hand, adding new dimensions to the perils of municipal finance. As a result, states will assume an increasing share of management and financial responsibilities previously reserved to the localities, perhaps including the negotiations of municipal employee wage levels.

In the older industrial regions, of course, many of the states are nearly as hard-pressed as their cities, which means that they in turn may have to bargain for federal assistance. In its recent annual report, the Joint Economic Committee cited the need to regularize such aid. "The federal government cannot completely offset the effects of economic decline, but it is necessary to provide assistance to cushion the impact of decline on public services."

Renewed emphasis will have to be placed on equalization of economic opportunity.

Ironically, the Northeast could significantly ease its burdens by encouraging greater economic opportunity in the poverty pockets of the Deep South and Puerto Rico. Such heavy loads as welfare payments and outlays for bilingual educational programs in northern cities need to be eased. "The education of both Appalachian whites and Negroes of the core South is inferior to that of the majority of the Southern population," says Harvard's John Kain. "A strong argument can be made for programs that are aimed at these groups, not after they have arrived in the metropolises but while they are still in the rural South. Enforcement of equal opportunity laws for government contractors and subcontractors is already increasing the openings for Southern Negroes, and these efforts should be stepped up. Broader legislation is also desirable."

Federalization and greater standardization of welfare should be pressed.

This will lessen interregional frictions in two ways. The overextended cities of the Northeast will gain from larger amounts of federal support—assuming they have the will to restrain further rises in benefits—for what according to most experts is a national rather than local problem. Second, disadvantaged groups in the rural South—actually the region that would receive the largest proportion of the increase in federal welfare payment—would find their economic positions improved, so pressures forcing them to migrate would be eased.

The tax code should be changed to provide a better balance of incentives between home ownership and renting and between new and existing structures.

The absence of a rental tax deduction comparable to the federal exemption of mortgage interest and property taxes on owner-occupied housing results in the renter bearing a high tax burden. This benefits the South, where home ownership predominates, relative to the metropolitan areas in the North. Furthermore, the JEC finds that "federal policies have encouraged new housing

construction at the expense of rehabilitation and have supported the rapid turnover of real estate holdings." Alan Campbell, president of the National Assn. of Schools of Public Administration, questions "whether home ownership is still such a desirable pattern." Says he: "We've built in a subsidy for high energy usage and the spread city that ought to be reviewed."

Environmental constraints in the Northeast must be selectively eased and the pressures to do this should not be resisted.

"People up in the North are griping about the lousy environment," says Walter Isard of the University of Pennsylvania, "but there's a trade-off. You can't have all the industry that gives you the tax base for a fine educational system and great environmental quality, too." An obvious prospect is that pressures will mount to develop the oil and gas resources of the Atlantic Coast area. If substantial, these reserves could reduce the Northeast's energy problem.

A high-level body of experts to formulate explicitly regional growth policies is long overdue and should be created.

If the U.S. is ever to have anything resembling a coherent and efficient growth plan, sophistication and objectivity must be added to the current melange of local boosterism and self-interest. Isard feels that this could best be accomplished by the creation of a President's Council of Regional Advisers, comparable to the present Council of Economic Advisers. In its recently released 1976 report, the JEC calls for a commission whose responsibilities would include "proposals designed to provide the Congress, the Executive, and the public with information necessary for the development of effective regional economic policies."

Unfortunately, the gap between the worlds of economic necessity and political reality is wide. In some respects, of course, the possibilities for a smoothing out of regional benefits and burdens have never been better because of the many factors that have made the regions more alike. Northerners who have resettled in the South often provide some leavening to the political atmosphere of their new region, where, as the University of Houston's Bill Thomas puts it, "there are still a lot of rural counties that aren't too sure about trusting the state government, let alone the federal."

GROWING TOGETHER

The concept that Southern politics is becoming less conservative is endorsed strongly by Michael F. Macleod, executive director of the House Republican conference. "If representatives are going to win the New South," he says, "they are going to have to become more moderate."

Although surging population growth will provide the South with greater Congressional representation, much of its raw political power is eroding. At its power peak, in 1956, the South could claim the chairs of 12 of the Senate's 19 standing committees. Now, the South's share of chairmanships has fallen to 9 of 23 committees, and it has lost such key chairs as Ways & Means and Agriculture. Recent changes in Congressional rules have greatly reduced the importance of the seniority achieved by some Southern legislators. A Southern Congressional leader can no longer immobilize a committee single-handedly.

Differences in the phases of economic development through which the various regions are passing will complicate the process of arriving at a workable regional policy. The South's relative abundance of energy riches further accentuates the tendency to me-firstism. James M. Howell, senior vice-president of First National Bank of Boston, has concluded, "You're going to have a tough row to hoe to persuade Southerners that the country is only as strong as each of its parts." As for the Northeast, another senior banking official believes that only now is a dim

awareness emerging as to the true magnitude of its losses. "When they realize the full extent of what's happened," he says, "there's going to be an awful lot of bitterness back East."

And so the lines are drawn for a coming war between the states. Reason and fair play could ease its anguish, but these are rarely found during wartime.

REPRESENTATIVE LENT ON THE ARAB BOYCOTT

HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. LENT. Mr. Speaker, a matter which has been of grave concern to many Members of Congress is the Arab economic boycott of Israel and firms in this country doing business with Israel. This boycott is insidious not only because it results in a foreign country's dictating to the United States and its citizens a form of discrimination, but primarily because the whole concept of the boycott is counter to all the principles of nondiscrimination and freedom of choice which Americans hold dear.

It is the stated policy of the Ford administration to oppose the boycott in all forms, and this policy is slowly being implemented. However, it must be up to the U.S. Congress, which oversees Federal agencies, to insure that no antiboycott laws are being violated and to enact new laws where necessary. Recent revelations have clearly indicated that the provisions of the Securities Exchange Act and Export Administration Act dealing with nondiscrimination must be strengthened. Further, the Federal Government, through its contract award procedures, can prevent the awarding of government contracts to firms which participate in the Arab economic boycott of Israel.

The Oversight and Investigations Subcommittee of the Committee on Interstate and Foreign Commerce, on which I serve, recently issued a report indicating that the Arab boycott is greater in scope than was indicated by the Commerce Department during hearings we held last summer. It is clear now that there are perhaps hundreds of American corporations and banks, doing upward of \$1 billion of business annually with Arab States, which are aiding the Arab economic boycott.

On April 8, 1976, I joined with my colleague from New York, Mr. Koch, and more than 60 of my colleagues in sponsoring the Foreign Boycotts Act, H.R. 13125. This measure strengthens the Export Administration Act of 1969 which makes it the national policy of the United States to prevent American firms from participating in economic boycotts imposed by foreign countries against other nations friendly to the United States. It also improves the disclosure provisions of the Securities Exchange Act of 1934.

On September 30, 1975, I had introduced legislation which provides that no information obtained under section 7(c) of the Export Administration Act, including the so-called Arab boycott re-

quest forms, shall be withheld from Congress.

In addition, I was pleased to join with numerous colleagues on April 9, 1976, in writing to the chairman of the Armed Services Procurement Regulations Committee, urging the amendment of existing procurement regulations to prevent the awarding of Government contracts to American firms, firms which participate in the Arab boycott against Israel. In that letter, we recommended that contractors be required to certify that they and their subsidiaries are in no way supporting or furthering restrictive trade practices fostered by a foreign country against another country friendly to the United States.

Last November 20 the President issued an Executive order directing the Secretary of Commerce to issue regulations prohibiting U.S. exporters from "answering or complying in any way with boycott requests discriminating against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin." I have not been fully satisfied that this order is being effectively carried out, but I believe that the goals expressed in that order must not be compromised.

I had hoped for congressional approval of my bill, H.R. 9932, to allow limited congressional access to confidential reports filed by American firms under section 7(c) of the Export Administration Act. The Oversight and Investigation Subcommittee subsequently, on December 8, 1975, obtained the confidential material from then Secretary of Commerce Rogers Morton under threat of a contempt of Congress citation. That issue aside, the boycott information received by the subcommittee is disquieting in that it reveals that boycott requests from Arab nations are more widespread in practice than originally contemplated and, further, that there is a significant amount of compliance with these requests by U.S. companies. These facts point out the need for additional legislation to strengthen the antiboycott provisions of the Export Administration Act. The Koch bill to accomplish this end has been introduced, and it is my sincere hope that it will receive early consideration by the International Relations and Interstate and Foreign Commerce Committees, and eventual approval in the House and Senate.

RESOLUTION PASSED BY THE SERVE YOURSELF AND MULTIPLE PUMP ASSOCIATION

HON. CARLOS J. MOORHEAD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. MOORHEAD of California. Mr. Speaker, a resolution recently passed by the Serve Yourself and Multiple Pump Association in southern California points out some of the very real problems facing our country in the event legislation requiring divestiture of the oil industry is passed.

The resolution was brought to my at-

tention by James L. Beebe, Paul T. Erdos and Bill Thompson and reads as follows:

This resolution, adopted unanimously by the attending board of directors and members of the Serve Yourself and Multiple Pump Association at a special meeting on May 26, 1976, is made with reference to the following:

"Whereas divestiture of the oil industry would shred the entire fabric of the United States economy with its resultant disastrous impact on every citizen; and

"Whereas certain individuals, both present Members of Congress and candidates running for office, have proposed legislation which would require oil companies to undergo vertical divestiture, resulting in the dismemberment of the integrated companies and creating a severe imbalance in the supply, refining, and distribution of oil, with the end result being that the supply of refined products to independents will be in jeopardy; and

"Whereas Congress has consistently established as one of its highest energy policy goals the maintenance of the competitive viability of independent oil companies and dealers; now therefore be it

Resolved, That the Serve Yourself and Multiple Pump Association and its members, collectively and individually, do hereby request, need and demand, that the Members of Congress of the United States of America defeat any proposed legislation on the divestiture that has been politically inspired, and ensure the competitive posture of the oil industry by retaining the small refiners and entitlements exemption. Adopted this, the 26th day of May, 1976."

ANNOUNCEMENT OF HEARINGS BY THE SUBCOMMITTEE ON DOMESTIC MONETARY POLICY REGARDING THE IMPACT OF THE FED'S MONEY POLICIES

HON. STEPHEN L. NEAL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. NEAL. Mr. Speaker, the functions of the Federal Reserve System and its Open Market Committee, who decide the Nation's money policy, are a mystery to most people. Most people do not know how important money policy is to the prices of the goods they buy, the interest rates they pay, their job opportunities, wages and profits.

As chairman of the Subcommittee on Domestic Monetary Policy of the Banking, Currency, and Housing Committee, it is my intention to hold hearings to bring out into the open the impact of the Federal Reserve's money policy on our economy. In specific, we are inviting testimony on:

First. How money policy affects the cost of living;

Second. How it affects production and employment;

Third. How interest rates are affected by money supply changes, both directly and through changes in prices, production, and employment;

Fourth. How government spending and tax policies affect money policy and their relationships to prices, interest rates, production, and employment; and

Fifth. Whether Congress should set economic growth, unemployment, inflation, and interest rate goals and require the Fed to promote achieving these goals.

These hearings will tentatively begin on Tuesday, June 8, at 10 a.m. in room 2128 of the Rayburn Building. I hope that all those interested in testifying before the subcommittee will call the staff director, Dr. Robert Weintraub, at 225-7315.

FUEL-EFFICIENT AUTOMOBILES ABSOLUTELY NECESSARY IN LIGHT OF OPEC THREATS OF HIGHER OIL PRICES

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. DINGELL. Mr. Speaker, fuel-efficient automobiles are an absolute must if this Nation is to continue the drive toward reaching beneficial energy conservation objectives. The call for support of the energy efficient Dingell-Broyhill-Train amendment to the pending Clean Air Act amendments, H.R. 10498, has been sent to the Members of the House in several documents that both Congressman JAMES BROYHILL and I have circulated and previously inserted in the CONGRESSIONAL RECORD.

Good cause for support of the Dingell-Broyhill-Train amendment, containing those automobile emission control standards recommended by Administrator Train of the Environmental Protection Agency is the news report in the Washington Post, Thursday, May 27, 1976, which bears the warning of an expected increase in the price of imported petroleum from OPEC, the Organization of Petroleum Exporting Countries. The United States at this point does continue to rely on imported oil to adequately serve the requirements of the Nation.

If the OPEC cartel does increase its price to importing countries by the end of June this year as expected, it will be mandatory that U.S. consumers have fuel-efficient automobiles available for purchase.

Adoption of the Dingell-Broyhill-Train standards is therefore mandatory. These standards have the distinct and documented advantage of providing for the manufacture of automobiles that will achieve improved gasoline mileage, conserve energy, and save consumers millions of dollars. Meanwhile, the Train standards Congressman BROYHILL and I are cosponsoring will provide for the same rapid improvement in air quality and health as does the committee bill, H.R. 10498, and the so-called Waxman proposal.

See previous CONGRESSIONAL RECORD inserts:

April 27, 1976, pages 11430-11436, FEA-EPA-DOT analysis of some effects of several specified alternative automobile emission control schedules;

May 11, 1976, pages 13453-13453, Dingell/Train auto air emission standards amendment to the Clean Air Act amendments; and

May 24, 1976, pages 15243-15245, Congressman JAMES T. BROYHILL of North

Carolina joins Congressman JOHN D. DINGELL of Michigan in cosponsorship of automobile emission control amendment—including the dissenting views of Congressmen DINGELL, BROYHILL, ROONEY, BROWN, MURPHY, MCCOLLISTER, STUCKEY, COLLINS, and KRUEGER.

The tighter standards contained in H.R. 10498 are not necessary and would only burden U.S. consumers with escalated costs for gasoline due to increased auto fuel consumption. The standards in the Clean Air Act amendments, title II, section 203, would result in a higher U.S. consumer payment to the OPEC cartel whether or not OPEC does increase its oil price by 4 or 5 percent, or more, or freezes it. Either way the American consumer will be unnecessarily stuck with inflated fuel costs if the House does not adopt the Dingell-Broyhill-Train amendment.

The Washington Post report on threatened OPEC price increases follows:

OPEC SEEN LIKELY TO INCREASE OIL PRICE 4-5 PER CENT

(By Lewis M. Simons)

BALI, INDONESIA, May 26.—Ministers of the major oil-exporting nations flew here today to decide on an expected increase in the price of petroleum.

Bound by the extraordinary security measures of the Indonesian military, the ministers of the Organization of Petroleum Exporting Countries did not reveal their specific plans for the conference, which is to begin Thursday morning.

However, several sources close to the conference suggested that there was already basic agreement on an increase of about 4 or 5 per cent over the current price of \$11.51 per barrel.

Such an increase would be considered a compromise between those OPEC countries, led by Iran, demanding a rise of the magnitude of 15 per cent and those led by Saudi Arabia, in favor of holding prices at the current level.

Last September, OPEC raised prices 10 per cent and then froze them at that level until June 30. A new increase, if it is agreed to here, presumably would go into effect July 1, although there is some possibility of the freeze being extended several more months.

An increase of about 5 per cent would raise the barrel price around 50 cents and could mean a one-cent increase at the pump if it was passed along completely by the companies.

Asked if the conference would approve a 4 to 5 per cent increase, Indonesian Mining Minister Mohammad Sadli said, "That sounds about right." Sadli, the only minister to speak to journalists so far, said Indonesia would take a "middle-of-the-road" position on any increase, going along with the majority.

According to sources close to the conference, the expected increase was agreed to last week at a meeting in Tehran between Iranian Interior Minister Jamshid Amouzegar and Saudi Arabian Petroleum Minister Sheikh Zaki Yamani.

Iran, with a population of 31 million and massive development plans, has run into a \$3 billion budgetary deficit this year. Shah Mohammed Reza Pahlavi is seeking a sharp increase in oil prices to help offset this shortfall.

Saudi Arabia, largest exporter of crude oil, has a population of only 8 million on which to spend its vast wealth. Thus, the Saudis are content to keep prices relatively stable.

[Yamani told reporters at the conference's opening session Thursday morning that Saudi Arabia "will oppose any increase in price and we have a very strong position

on that." Observers said, however, that a moderate increase is still a likely outcome of the meeting.]

By giving in to the Iranians and such populous oil states as Algeria, Saudi Arabia could join in a warning to Western oil-consuming nations that they must hold back inflation on products they sell to the OPEC states or risk another massive price increase.

In addition to the decision on a base price, the ministers are also expected to determine a new formula of price differentials for varying grades of crude oil. The third issue expected to come under discussion is whether or not to move the OPEC secretariat from Vienna. Geneva is considered a likely new location.

The issue of differentials is complex, with technical as well as economic and political implications. OPEC countries now charge a customer slightly more or less for their indigenous variety of oil than the base price, which is linked to a particular grade of crude oil known as Saudi Arabian light.

The differentials are determined largely by three considerations: density (lighter varieties are more valuable than heavy ones), sulphur content (low sulphur content is valued for antipollution efforts) and proximity of the oil to its destination.

However, these considerations are open to broad interpretation by individual member-states and there has long been disagreement on price differentials within OPEC.

Under this system, already in use by Algeria, differentials would be determined not by inherent qualities of the particular grade of oil but by its product yields. Thus, a grade of crude oil producing a high level of gasoline would be worth more than another variety that produced less valuable fuel oil.

The ministers arriving here were greeted in traditional Balinese style by two young couples wearing gold-threaded sarongs and carrying purple and gold umbrellas.

With dozens of armed police and soldiers keeping reporters and tourists away, the ministers had their necks garlanded with flowers. They were swiftly ushered into cars for the two-minute ride to the heavily guarded cottage complex where they are to be housed and to hold their conference.

Heavily armed troops are sprinkled all over the tiny island, stopping cars and motorcycles and demanding to see identification. About 150 journalists here to cover the conference have been told they will not be allowed into the meeting area—a huge, luxurious complex owned by the financially troubled Indonesian state oil company, Pertamina.

The extraordinary security is a result of a terrorist attack on an OPEC conference in Vienna last December, which has led to the possibility of moving OPEC out of that city. A number of ministers and other OPEC officials were kidnapped by the terrorists, led by the Venezuelan leftist known as Carlos.

Apologizing to reporters for keeping them outside the Pertamina cottage complex, an OPEC secretariat official said, "I'm afraid we're all prisoners of Carlos."

INCREASED LAW ENFORCEMENT SERVICES AT CORPS OF ENGINEERS WATER RESOURCES DEVELOPING PROJECTS

HON. MARTHA KEYS

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mrs. KEYS. Mr. Speaker, on May 25, 1976, I introduced H.R. 14005, legislation

to authorize the Secretary of the Army, acting through the Chief of Engineers, to contract with States and their political subdivisions for the purpose of obtaining increased law enforcement services at water resources developing projects under the jurisdiction of the Department of the Army. This legislation will provide a much needed increase in law enforcement services at peak-use times during the summer months at the hundreds of projects under the jurisdiction of the Corps of Engineers.

The report of the Secretary of the Army to the Congress on visitor protection services at Corps of Engineers lakes, dated December 1974, indicated that a reasonably significant level of criminal activity exists at a majority of corps lakes.

In northeastern Kansas, visitors to Milford, Tuttle Creek, Pomona, and Perry Lake total more than 6 million during the summer months, nearly three times the entire population of the State of Kansas. The strain on local law enforcement officials and their capacity to respond to emergency situations created by this influx of people outstrips what the local taxpayers can provide. The millions of people enjoying the recreational facilities at these lakes are left with little recourse in seeking help. This bill would authorize funds to be appropriated as may be necessary to insure continued enjoyment by visitors at lakes and to help with the growing problem of crime and the need for help to local officials.

I believe that passage of H.R. 14005 will provide the needed assistance to local law enforcement officials so that they will be better equipped to provide additional visitor protection services at peak-use times at Corps of Engineers lakes in the Second District of Kansas and throughout the United States.

NATURAL GAS SHORTAGE OF THE NATION

HON. JOHN M. MURPHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. MURPHY of New York. Mr. Speaker, many of us are concerned that the year might end without enactment of legislation to alleviate the Nation's natural gas shortage. After consulting with a number of members within and without the Committee on Interstate and Foreign Commerce, Congressman KRUEGER and Congressman Brown of Ohio and I have decided to introduce a compromise bill drawing upon both the Krueger-Broyhill bill that lost by only four votes in the House in February, and the Pearson-Bentsen bill that passed the Senate 58 to 32 last year.

The bill is very similar to the Pearson-Bentsen bill except that it omits "incremental pricing." It differs from the earlier Krueger-Broyhill bill in its more restricted definition of new gas, which specifies that only gas dedicated to in-

terstate commerce after January 1, 1976, would be considered "new gas." Gas covered by expiring contracts would not receive the deregulated price upon release. Its essential features include:

First. Decontrol of new onshore gas production.

Second. Phased decontrol of offshore natural gas production with FPC price-setting authority through 1980, but not after.

Third. Priority for agricultural users.

Fourth. Phasing-out of natural gas as a boiler fuel for the generation of electricity.

We have also deleted title I of the original Senate and Krueger-Broyhill bills, since that provision dealt only with the winter period of high demand, which has now passed by.

The need for legislation that genuinely addresses the hard choices that we need to make on energy is permanent. I urge your support of this important legislation, which is a genuine compromise, genuinely capable of bringing additional supplies, and actually possible of being signed into law.

MEDICAL DATA SENT BY SATELLITE FROM AMBULANCE FOR FIRST TIME

HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. TEAGUE. Mr. Speaker, I want to bring to the attention of my colleagues another example of the application of health care systems and concepts developed for manned space flight to down-to-Earth medicine. For the first time medical data has been sent from a moving ambulance to a hospital by satellite. I am including the text of a NASA news release describing this program for the information of my colleagues:

Scientists and engineers at NASA's National Space Technology Laboratories—NSTL, Bay St. Louis, Miss., have sent medical data from a moving ambulance to a hospital by satellite for the first time.

A special portable transmitter and antenna developed by NSTL and the Science Services Laboratory operated by General Electric Co., permits continuous transmission of voice and medical data—including electrocardiograms—from the moving ambulance to the satellite and down to a hospital receiving station.

During demonstrations of the system last week on a highway near Bay St. Louis, communications from the ambulance were received at locations as far away as New Mexico. Receiving stations are equipped with an inexpensive receiver which helps make this form of remote health care economically feasible.

The new system could prove to be an important breakthrough in emergency medical care. Ultimately, it could lead to development of a special medical satellite which would relay emergency medical data not only from ambulances but also from remote hospitals, ships, offshore oil platforms and other remote locations to major medical centers for medical consultation.

The concept involved is similar to the telemedicine demonstration being conducted

by the Johnson Space Center, Houston, Tex., at the Popago Indian Reservation in New Mexico, and use of the ATS-6 satellite for medical communications in Alaska. The NSTL system uses the data collection system on the GOES-3 satellite which transmits earth environmental information.

The new system was developed under a program sponsored by the NASA Technology Utilization Office in cooperation with the Southern Regional Medical Consortium. The Consortium is comprised of the University of Southern Mississippi, the Southeast Air Ambulance District, the Forrest General Hospital in Hattiesburg, Miss., and the Mississippi Governor's Office of Science and Technology.

LOUIS M. DEVITO—A GREAT WESTCHESTER CIVIC LEADER

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. OTTINGER. Mr. Speaker, on April 11, much of Westchester was saddened by the passing of my dear friend, Lou DeVito. At funeral services on April 14, a touching tribute to Lou was offered by Milton Jacobs which I would like to share with my colleagues.

The tribute follows:

TRIBUTE BY MILTON JACOBS

I am honored beyond description to have been selected by the DeVito family to deliver a formal statement in praise of my true and devoted friend, Louis M. DeVito, who left us in body, but not in spirit, on Palm Sunday, April 11th, 1976—a day all of us will remember with profound and unrequited sorrow, until we meet him once again.

It is most appropriate that those of us assembled, however briefly, pay honor to this extraordinary relative, friend and neighbor, this morning, for it is mandated in the Sayings of the Fathers, that:

"He who learns from his neighbor, (a neighbor like Lou DeVito), a single chapter, a single rule, a single verse, a single expression, or even a single letter, ought to pay him honor."

We all have learned so much from the life of our departed friend, far beyond the Chapter, rule, verse, expression or letter, that we more than readily acknowledge that we owe him this debt of honor. He taught us love, devotion, compassion, honesty and integrity in a lifetime where there has been a singular lack in this kind of moral character—and these characteristics of a good and decent life were not limited to his family alone. They were generously and in full measure given to his beloved City and its government, which he loved in a profound and passionate way.

I only knew Lou for a relatively short, but productive time, for we only became warm and close friends in 1971. But I do recall, as if told to me yesterday, what was said of him a long time before our friendship ever began. It was related many years before and many times over by the late Arthur Peyser, a distinguished and noted architect, and a rigidly stern but fair judge of human character and personality. He appraised Lou DeVito thusly:

"He is the most honest man I know. He does not have to be watched. You do not have to be on the job if he is there. The work will be done."

And so it was, I later found out—if Lou was there, you didn't have to worry any more. The job would always be done. He gave to all of us the feeling of abiding sec-

urity, which so many of us lack in so many ways. The City knew for 16 years while Lou was a Councilman, that the job would be done, if he was there. And the County of Westchester has, in recent years, discovered that the job would be done if Lou was there.

And so it was in even greater measure with his family, I later found out, when we became friends. He was on the job with them—24 hours and more, if possible, a day, leading, loving, caring, doing—there was a never-ending search for their concerns, their problems, their aspirations, and their welfare. He was in essence—a one-man security system for all of us whom he touched. He made us feel safe and secure. He furnished the shield of a protective father to all who gave him a hand in friendship.

John Donne, a noted writer, who lived in the seventeenth century and who is best known for his "For Whom The Bell Tolls" quotation, wrote in this same quotation:

"Any man's death diminishes me, because I am involved in mankind. . . ."

Of course, that is so true for all of us assembled here today. But in the case of our departed friend, he was not just "any man", he was a "special man", an "extraordinary man" and the "diminishment" in this case, is a staggering and overwhelming loss, felt in all of the righteous quarters of this community.

Wherever I have gone in our City since Sunday, I have found a repetitive theme, a sense of loss in 5 simple words, spoken over and over again, with deepest and earnest remorse and conviction: "He Was a Good Man". This goes to the mind and heart of what we, who knew him, feel this morning—a legacy spoken in truth, and completely devoid of the frills of fancy prose, which would only have embarrassed a man who carefully expressed himself precisely and to the point. For "He Was a Good Man" and we know in this exceedingly difficult world of today, a good man is hard to find.

Young Sam Mosca lovingly observed yesterday about his Grandfather—that maybe the gates of Heaven needed urgent repair and perhaps that is why the Lord called for Lou so quickly. I like to think, I hope not sacrilegiously, that maybe the ills of this world were beginning to be too heavy a burden for the Lord to carry alone, and he needed a good and competent man to assist him. That is why Lou left in such a hurry. When someone needed him, you didn't have to ask him twice.

We know perfectly well and find solace in the fact that Lou will find favor with the Lord, for in the 24th Psalm, a Psalm of David, entitled, "The favored of the Lord", we see that he meets the specifications carefully drawn as if David surely had Lou in mind:

"Who shall ascend the mountain of the Lord? And who shall stand in His Holy Place? He that hath clean hands, and a pure heart; He who hath not lifted up his soul unto vanity; and hath not sworn deceitfully. He shall receive a blessing from the Lord."

Louis M. DeVito, our beloved husband, beloved father, beloved grandfather, beloved brother, beloved relative and friend—to all of us—He Was a Good Man.

MAY IS BETTER HEARING AND SPEECH MONTH

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. KEMP. Mr. Speaker, May is National Better Hearing and Speech

Month. Speech and hearing impairments comprise the largest single handicapping condition in America today. Ten percent of all children and adults in the United States have speech, language or hearing impairments which diminish their ability to communicate effectively. Children with communication disorders can experience difficulties in learning and find it hard to establish relationships with others. Communication disorders in adults can adversely affect social interactions and often create emotional problems which may interfere with the ability to earn a living.

Speech pathologists and audiologists strive to restore the communicative facility of those persons whose educational, vocational, personal, and social functioning and adjustment are impaired by speech and/or hearing handicaps. The diagnostic and therapeutic services required by persons so afflicted are made available through a variety of hospitals, rehabilitation centers, public and private clinics, psychiatric and retarded centers and private practitioners.

One of my constituents, Richard E. Allison, chief of the speech and hearing services division at the excellent West Seneca Developmental Center and Children's Psychiatric Center in West Seneca, N.Y., has brought to my attention a series of very fine brochures recently prepared by the American Speech and Hearing Association. I commend the association for its very fine work, and for heightening the public's awareness of this very important area of health.

TRANSPORTATION OF PRUDHOE BAY NATURAL GAS TO UNITED STATES

HON. PHILIP E. RUPPE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. RUPPE. Mr. Speaker, the Subcommittee on Energy and Power of the Interstate and Foreign Commerce Committee, under the able chairmanship of Mr. DINGELL, has been holding important and extensive hearings on the several bills which have been introduced concerning the transportation of the Prudhoe Bay natural gas to the United States. These hearings have included consideration of H.R. 11273, a bill which I and 79 of my fellow Members have cosponsored. This bill, which I firmly believe to be in the national interest, would require approval of a trans-Canadian system to transport this important new energy source directly to markets throughout the United States.

Mr. Speaker, in testifying before these hearings, Mr. John C. Bennett, vice president of the El Paso Alaska Co. which sponsors the trans-Alaska LNG tanker project, made what is, I believe, a serious and unfortunately misleading error in his prepared statement given on May 18.

Mr. Bennett stated that in considering the questions before it the committee should and, I quote, "refer to the only study made by a disinterested party." He then mentions the study made by the Department of the Interior in December 1975 and subsequently filed with the Congress. This is not the only study that has been made by a disinterested party. In November of 1975, after a 2-year study, the internationally known and respected Rand Corp. of Santa Monica, Calif., published a report entitled "Energy Alternatives for California: Paths to the Future." This report was commissioned by the California State Assembly and was funded by the California State Assembly and the Rockefeller Foundation. Certainly these are disinterested parties. I presume Mr. Bennett simply was unaware of this work. I draw his attention to it.

Mr. Speaker, one section of this large study concerned itself with the natural gas supply situation for the State of California. In considering the Prudhoe Bay gas, Rand Corp. examined the two transportation proposals—that of Arctic Gas and that of El Paso—using five criteria, namely:

First, cost; second, reliability; third, timeliness; fourth, safety; and fifth, environmental effects.

On all five criteria they judged the Arctic Gas proposal superior—and superior for California. I submit that if the El Paso system which would bring its LNG directly to California is less desirable for California, it is clearly less desirable for all other parts of our country.

The Rand report also discusses the feasibility of displacement. The ability to displace the gas successfully to market areas in the east and midwest is at the heart of the El Paso proposal. El Paso has blithely assured all that it is an easy matter—really just filling empty pipes. Rand most emphatically does not agree. Let me quote briefly—

Conceptually, displacement appears to be a simple idea. Working out the specific details of displacement agreements covering up to two decades of displacements under changing circumstances is likely to be immensely complicated and potentially rancorous. Moreover federal intervention will probably be necessary to resolve the inter-regional conflicts. Because of this complexity and apparent conflict, any predictions about whether such agreements could be reached and what they might contain must be considered highly tenuous.

Mr. Speaker, let me turn briefly to the Department of the Interior's study—that alleged "only study made by a disinterested party." This study is a poorly framed and unbalanced work. First, it analyzes not the two systems actually proposed—the only systems that people were then willing to build—but two systems that those who wrote the report thought that the businessmen who had spent millions of dollars should have proposed. Second, the authors utilized a methodology—a national net economic benefit analysis—that is appropriate to the study of projects whose benefits can-

not be measured in the marketplace. Of course, here by comparing actual cost to the consumer, the benefits and costs can be readily measured. And, finally, the authors skewed the results in a number of ways. For example, in determining the net economic benefits, they charged the Arctic Gas Project with the cost of taxes paid by the Canadian portion of the pipeline while ignoring as a cost for El Paso all taxes paid in the United States. The apparent rationale was that a tax paid to the U.S. Government is not really a cost but merely a transfer payment that will be spent elsewhere in the United States. I would have a hard time convincing my constituents that the portion of their gas bill that goes for Federal taxes is not really a cost.

I am not alone in feeling that this study is badly—indeed dangerously—in error. Dr. Charles Cicchetti, director of the Wisconsin office of Emergency Assistance and well-known as author of the study entitled, "Alaskan Oil: Alternative Routes and Markets" is strongly critical of the Department of the Interior study. Dr. Cicchetti submitted his comments as part of his testimony on March 25, 1976, to the Senate Committees on Interior and Commerce. He expressed "outrage" at what he said were selective omissions of fact and a distorted economic analysis that tilted the study.

Mr. Speaker, this matter is of such importance that I cannot let the Department of the Interior study go unrefuted.

MURDERS OF FOUR URUGUAYANS

HON. LESTER L. WOLFF

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. WOLFF. Mr. Speaker, I rise to express a deep sense of sadness and outrage over the recent murders of four Uruguayans living in exile in Argentina. One of those murdered was former Uruguayan Senator Zelmar Michelini, whose plight was brought to my attention over a year ago by a constituent of mine who knew the senator and his family personally. Senator Michelini had tried desperately to come to the United States with the purpose of testifying before Congress about the repression of human rights in Uruguay. Because he lacked a valid passport, he was a captive in Argentina, with no option but to return to Uruguay which would have meant certain imprisonment and probable death.

Senator Michelini stayed in Argentina where, it was supposed, his life at least would be protected, if not his rights and freedoms. However, last week he was arrested by Argentine authorities, and all of our efforts to ascertain his whereabouts and to inquire about his well-being were in vain. My office made several calls to the Argentine Embassy here, and we were told that inquiries were being made and information would be

gotten to us. Before that information was received, the press carried the tragic account of the murder of Senator Michelini and his colleagues, whose bodies were found in an abandoned car in Buenos Aires.

The foreign assistance bill vetoed by the President contained a provision to suspend U.S. aid to any country which consistently violates international standards of human rights. I sincerely hope that, when that provision is law, our Government will apply its conditions to countries such as Uruguay which apparently see fit to dispose of human rights and freedoms through terrorist tactics.

TRIBUTE TO JUDGE NEWELL BARRETT

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. WAXMAN. Mr. Speaker, I would like to commend Newell Barrett, judge of the Superior Court of Los Angeles County, who is completing two terms as president of the board of trustees of Portals House.

Portals House is a psycho-social rehabilitation agency for mentally ill adults in Los Angeles. In fact, Portals is the only agency of its kind west of Chicago.

Portals helps psychiatrically disabled persons to secure gainful employment and to function socially in the community.

While many community mental health services in southern California have been curtailed by financial crises, Portals House, under Judge Barrett's strong direction, has established a strong fiscal base. Now, thanks to Judge Barrett's leadership, Portals is operating from a good financial position.

Portals now plans to increase services to more mentally disabled persons with programs not duplicated anywhere in Los Angeles.

His leadership extends far beyond establishing fiscal policy, however. Clients and staff respond to Judge Barrett's warm, easy-going manner. He participates frequently and easily at social functions Portals provides for its clients.

Judge Barrett is concerned about people. During his tenure as presiding judge of the juvenile court, he initiated important changes for juvenile justice. His care and concern for people is shown in all of his relationships, in or out of the courtroom. On June 11, Judge Barrett turns the gavel over to the new president of Portals. At that time, representatives from government, from other agencies, and friends of Portals, including Edwin E. "Buzz" Aldrin, Jr., will be present to acknowledge his outstanding contribution to Portals and to the mental health community of Los Angeles.

CXXII—1002—Part 13

THE NEW NATURAL GAS DEREGULATION AMENDMENTS OF 1976 (H.R. 14046)

HON. TIMOTHY E. WIRTH

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. WIRTH. Mr. Speaker, the House and the Senate continue in their inability to resolve their differences on natural gas pricing. Several months ago the House and the Senate passed separate bills on the subject of natural gas pricing and regulation. The bills diverged substantially in their respective solutions to the issue of prices applicable to natural gas at the wellhead. The House bill passed narrowly while the Senate bill passed by a rather substantial margin. These circumstances alone bode ill for the prospects of conferees being able to resolve the differences between the two Houses. And indeed, since adopting these measures the two Houses have not even been able to agree on when the conferees are to meet.

Now, a bipartisan coalition of Senators have initiated new legislation in an effort to end the stalemate. This new Senate proposal (S. 3422) has already cleared the Senate Commerce Committee by a vote of 17 to 1, and should receive floor consideration shortly.

Today in a desire to initiate a reciprocal effort in the House, I am introducing the New Natural Gas Deregulation Amendments of 1976 (H.R. 14046). This bill closely parallels the provisions of S. 3422, but differs importantly in its treatment of new onshore natural gas. S. 3422 would end FPC authority to regulate new onshore natural gas provided that the price for such gas does not exceed \$1.60 per thousand cubic feet during the 7 years following the date of enactment. The bill I am introducing today (H.R. 14046) would, by contrast, remove all Federal controls over the price of new natural gas produced onshore. This would result in maximum incentives for exploration and development of onshore wells, and would eliminate a significant amount of costly Federal regulatory procedure.

In addition, H.R. 14046 provides for continued Federal regulation of offshore new natural gas prices at a rate equal to the Btu equivalent of the maximum weighted average first sale price for crude oil at the time of enactment. This base price is to be adjusted by the FPC at 5-year intervals in accordance with specifically enumerated criteria including the inflation rate, prospective costs, and the adequacy of exploration incentives.

Old natural gas would be subject to a national ceiling price available upon expiration of existing contracts. This ceiling would be revised every 2 years as under existing practices of the FPC. In establishing the ceiling price applicable to old natural gas, the commission shall consider only those criteria specifically

enumerated in the bill. Additional provisions of the bill are discussed in the summary which I shall insert in the Record at the end of these remarks.

Mr. Speaker, the patience of the American public has been sorely tried by the spectacle of this Congress legislating itself into knots over the natural gas issue. After almost 18 months of congressional wrangling, neither the consumers nor the producers of natural gas in this country have any assurance about what natural gas policy is to be. I hope that the bill which I introduce today will lead quickly to the establishment of a clear and realistic Federal policy on this issue.

SUMMARY OF THE NEW NATURAL GAS DEREGULATION AMENDMENTS OF 1976—H.R. 14046

I. NEW NATURAL GAS DEFINITION

The definition of "new natural gas" in H.R. 14046 is virtually the same as that contained in S. 2310. Natural gas dedicated for the first time to interstate commerce on or after January 1, 1976; natural gas produced from newly discovered reservoirs or extensions of existing reservoirs; and natural gas available after the expiration of short term or emergency contracts is defined as "new natural gas." (Under S. 2310 the effective date was January 1, 1975.)

II. ON-SHORE NATURAL GAS PRICING

New natural gas produced from on-shore wells would be deregulated at the well-head. Producer regulation under the Natural Gas Act is terminated for new natural gas sales. That is, the requirements for producer certification, dedication, rate filing and abandonment of new natural gas produced and sold from on-shore lands will no longer apply. State regulatory options are specifically protected.

Old natural gas pricing would be subject to revised criteria, as in S. 2310, upon the expiration of contracts by their own terms (and not through any express or implied power to terminate or power of renegotiation contained in such contracts). The FPC would establish a national ceiling price for old natural gas available upon the expiration of contracts, and this ceiling price would be revised every two years, as under current FPC practice.

III. OFF-SHORE NATURAL GAS PRICING

Under S. 2310, new natural gas produced from off-shore federal lands would be subject to FPC price ceilings for five years (through December 31, 1980). S. 2310 contained criteria for the FPC to consider in establishing such ceiling prices.

Under H.R. 14046 a permanent system of FPC ceiling price authority is established for new natural gas produced from off-shore federal lands. Initially, the FPC would establish a "base price" for sales of new natural gas from off-shore federal lands equal to the average price of domestic oil, on an energy equivalent basis, in effect on the date of enactment.

This initial base price, to be effective for five years (January 1, 1976 through December 31, 1980), would be about \$1.35 per Mcf (compared to 52¢ per Mcf under current law).

On January 1, 1981, and thereafter at five year intervals, the FPC would be required to revise its base price to reflect certain criteria enumerated in H.R. 14046. The criteria are comparable to those contained in S. 2310 to govern the ceiling price for off-shore new natural gas production.

The total price, or "ceiling price" for new natural gas produced from off-shore federal lands would include the base price, plus an adjustment made quarterly for inflation (or

deflation), plus other necessary, proper and customary adjustments.

Initial contracts for the sale of new natural gas from off-shore federal lands would be for a minimum term of 15 years, as in S. 2310. Successor contracts would be for the life of the reservoir.

IV. ADVANCE PAYMENTS

H.R. 14046 retains language contained in S. 2310 relating to the regulation of contracts, which provide for advance payments by purchasers to producers. The FPC is authorized to require full repayment of any advance payments, plus interest for the use of the purchaser's capital. (Current FPC practice is to prohibit advance payments.).

V. CURTAILMENT PRIORITIES

H.R. 14046 contains virtually the same provision as contained in S. 2310 for service priority during curtailments to residential users, small users, hospitals, and other users providing services vital to the health and safety of the public, agricultural producers, food processors and food packagers (both for current and expanded capacity), and for priority industrial users.

VI. SYNTHETIC NATURAL GAS

H.R. 14046 retains the provision of S. 2310, with technical redrafting, which establishes FPC jurisdiction over synthetic natural gas (SNG) production, and interstate transportation and sales. Unlike S. 2310, H.R. 14046 assures a certificate without hearing to existing SNG plants.

VII. BOILER FUEL USE OF NATURAL GAS

H.R. 14046 contains language from S. 2310 which requires electrical utilities (above a certain rated capacity) to convert to alternate fuels. The period of conversion, however, is shortened from 12 years to 10 years. Electrical utilities would be required to convert to available alternative fuels within the specified time period, or upon expiration of existing service contracts, whichever is sooner.

The term "boiler fuel use of natural gas" is expanded for future application to include not only large electrical utilities, but industrial facilities which use natural gas for space heating and/or steam generation in excess of 300 Mcf per day. Both electrical utilities and large industrial boiler fuel users would be prohibited from using natural gas as a boiler fuel unless initially contracted for prior to May 10, 1976.

H.R. 14046 retains those exceptions contained in S. 2310 that relate to protection of the environment, including the use of natural gas for pollution abatement equipment and, if necessary, to meet air quality standards.

Whether served by an interstate pipeline or an intrastate pipeline, all large, electrical utilities would be required to convert subject to the provisions of H.R. 14046. The prohibition on future boiler fuel use would also apply to interstate and intrastate consumption.

THE MISERABLE PLIGHT OF ELDERLY AMERICANS

HON. EDWARD P. BEARD

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. BEARD of Rhode Island. Mr. Speaker, since I began my career in public life, I have championed the cause of the elderly, the infirm, and the sick. Last week I was shocked and outraged at the report of an event which took place in a Washington nursing home. The anger swelled within me when I read of the tragedy which took place.

Mr. Speaker, for the benefit of everyone here in the Congress, I am including for publication in the Record a copy of that newspaper article. It described woe-fully the miserable plight of some of our elderly Americans.

I intend to do everything I can to continue my crusade to protect those who direly need it.

The Washington Post article follows:

PATIENT DIES WHEN RESTRAINING STRAPS

CUT BREATH

(By Alice Bonner)

The death of a 91-year-old Arlington woman in a Washington nursing home last week was caused when straps used to bind her to a chair cut off her breathing and blood flow, the D.C. medical examiner's office has found.

Mary Frances Andler's death in the Mar-Salle Convalescent Home on May 13 was ruled accidental by the medical examiner, after an autopsy, and by homicide detectives who are continuing their investigation.

Mrs. Andler was found in a private room of the home at 2131 O St. NW, and apparently "had been dead for some time . . . the body was cool," according to the deputy chief medical examiner, Dr. Brian Blackburn, who performed the autopsy.

Sally Marsh, executive director of Mar-Salle, confirmed that an employee who was responsible for Mrs. Andler's supervision was dismissed after her death.

Mrs. Andler was the fourth elderly patient to die in Washington nursing homes or hospitals since 1972 from asphyxiation caused by restraining devices, according to Dr. Blackburn. Use of restraints is "sort of a common practice," and such deaths average one a year, he said.

"It is general medical knowledge that restraints are necessary in the nursing care of some patients when someone is confused or will not stay in bed; it's just a matter of careful supervision," Dr. Blackburn said.

Nursing homes in Washington are required to define their restraint procedures and record monitoring of restrained patients under regulations governing their licenses. Mar-Salle was licensed and certified for Medicaid and Medicare payments by the D.C. department of human resources after an inspection last December, a DHR spokesman said yesterday.

A team of DHR investigators inspected Mar-Salle this week after the medical examiner's office informed them of the death, according to Pat McShea, chief of health services in the licensing office. The team's finds were withheld.

Rita Andler, 59, the deceased woman's daughter and her usual companion, said she placed her mother in Mar-Salle on May 6 for a 20-day stay. "It was for my once-a-year vacation from caring for her," Miss Andler said. "We have been alone together for 57 years and she was the only thing in my life."

Miss Andler said she learned of her mother's death when a friend telephoned her Saturday in Delphi, Greece. But it was not until she saw the death certificate that she knew how her mother died, she told a reporter.

"I went to the funeral home and was shocked to read on the death certificate (that she died of) 'asphyxia and interruption of venous return to the heart from compression of the upper abdomen by restraint,'" Miss Andler said. She said the certificate also read: "found on floor with restraint about waist, tied to chair." The certificate was signed by Dr. Blackburn.

Miss Andler said this last stay was her mother's 11th at Mar-Salle because "I have been lucky enough to have had 11 trips to Europe." She placed her mother in a private, third-floor room in the 200-bed facility, for \$29 a day, Miss Andler said.

A former employee relations specialist at the Department of Defense, Miss Andler said

she retired six years ago to care for her mother. "These years when I devoted 23 hours a day to her have gone well," she said. "I am so numb because of the way she died."

A native of Elizabeth Town, Ky., Mrs. Andler was a Washington resident for 30 years before she moved with her daughter to Arlington six years ago. They lived at 1021 Arlington Blvd., in the Arlington Tower apartments.

PROTECTION OF THE NEW RIVER

HON. HERBERT E. HARRIS II

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. HARRIS. Mr. Speaker, I believe that legislation like H.R. 13372, which was introduced by Congressman NEAL and which I cosponsored, is necessary to insure the preservation of the New River which is located in Virginia and North Carolina. This bill would designate a 26.5 mile segment of the New River as a component of the National Wild and Scenic Rivers System. On May 13, 1976, I presented the following statement to the National Parks and Recreation Subcommittee expressing my support for H.R. 13372, which I would like to share with my colleagues. I urge you to carefully consider the merits of this proposal which will soon be before the full House:

STATEMENT OF HERBERT E. HARRIS, II, MEMBER OF CONGRESS (EIGHTH DISTRICT OF VIRGINIA) IN SUPPORT OF H.R. 13372 TO PRESERVE THE NEW RIVER, MAY 13, 1976, BEFORE THE HOUSE SUBCOMMITTEE ON NATIONAL PARKS AND RECREATION

As cosponsor of H.R. 13372, I urge my colleagues to give their full consideration of this bill which would designate a 26.5 mile segment of the New River as a component of the National Wild and Scenic Rivers System.

The New River is unique in that it is the oldest river in the western hemisphere and the oldest free-flowing river in the world. The pure water of the river is laden with rare and endangered species of marine life and archeological evidence. It is the last unpolluted river in the east containing enough water and gentle flowing areas that can be used for canoeing and raft riding year-round. The bottomland of the valley, nourished by the river, has brought forth rich harvests of agricultural products. All of this is threatened by a power project whose benefit is as nebulous as its devastation is clear.

The Appalachian Power Company has applied for a license to construct a massive pumped-storage hydroelectric power project which would back up 44 miles of the New River and flood as many as 40,000 acres of fertile land in North Carolina and Virginia.

After careful study, I have concluded that preserving the New River far outweighs all benefits that might result from this project—a project of highly questionable merit for several reasons.

The most important point is that the project would be merely a storage facility which would consume energy, not produce it. The project would provide peak load power for transmission to the Midwest. During periods of slack demand, power generated elsewhere would be used to pump the water back into the upper reservoir. A net loss of power would result from this process, because the project would consume four units of energy for each three units it generates. This process would also add to air pollution since extra coal-fired generation would be required to return the water to the upper reservoir.

As many as 3,000 people would be displaced if dams are constructed. Their land, their homes, their way of life would be destroyed. The Agricultural Stabilization Conservation Service estimated in 1973 that the project would destroy \$13.5 million in annual agricultural income. To me, this loss is more serious than the claim that the total monetary gain from the project would be \$6.7 million per year.

Proponents of the power project claim it would create as many as 1,500 jobs. However, these jobs would be available only during the construction period of the project and many of them would be seasonal positions.

The North Carolina General Assembly voted unanimously to include a 26.5 segment of the New River in the North Carolina Natural and Scenic Rivers System and petitioned the Secretary of Interior to declare that segment a component of the National Wild and Scenic Rivers System. On March 12 of this year, Secretary of Interior Kleppe announced his intention to act favorably on the state's request. Additional support has come from such groups as the Conservation Councils of Virginia and North Carolina, the Isaac Walton League and the Sierra Club.

Congress must make certain that this historic and beautiful river is preserved for the enjoyment of present and future generations. The legislation we are now considering would remove any remaining doubt as to the protection given to this river and would resolve the dilemma created by those who want to sacrifice everything of value in the name of technological advancement and those who want to make the most intelligent possible use of our great but limited natural resources.

INVESTMENT TAX CREDIT FOR FARMS

HON. ALVIN BALDUS

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. BALDUS. Mr. Speaker, on Monday of this week, May 24, I introduced a bill to extend the benefits of the investment tax credit to individuals purchasing farm property from their ancestors. Such purchases have been excluded from the investment tax credit in the past, but I feel that there is an urgent need to reconsider that position.

The purpose of the tax credit is, of course, to encourage investment. With the number of farms in the country steadily decreasing and with the average age of the American farmer above 50 and steadily increasing, there is an urgent need to promote investment in our farms.

Skyrocketing land values, increasing farm expenses, especially in the area of petroleum-related products, and higher costs for conservation and environmental protection practices have made farming so difficult to enter into that we must take steps to encourage the passing on of farms to the sons and daughters of farmers.

Most farm capital is tied up in loans and reinvestment in the farm. The price of taking over a farm is so high as to require large and complicated loans, usually from the Government. While the quality of life on a farm is high, the hours are long and arduous and usable

income is low—very frequently below minimum wages.

My bill would extend the investment tax credit only to individuals purchasing farm property from their ancestors, usually their parents. I invite my colleagues to contact me if they wish to join me in this legislation.

COMPLAINT BY COMMON CAUSE AGAINST REPRESENTATIVE SIKES

HON. ANDREW MAGUIRE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. MAGUIRE. Mr. Speaker, the Committee on Standards of Official Conduct has voted to proceed with a formal investigation of the complaint by Common Cause against Representative SIKES.

I believe the following enclosure in the RECORD will be of interest to Members:

LEGAL ARGUMENT SUBMITTED BY COMMON CAUSE REGARDING THE ALLEGATIONS AGAINST REPRESENTATIVE SIKES

The sole question before this Committee is whether to undertake an "investigation" of the facts surrounding certain charges concerning Mr. SIKES. The Committee is morally bound to undertake such an investigation if two simple conditions are both met by certain allegations of misconduct.

1. The allegations involve either:
 - (a) violations of the historic and central obligations of Members to behave so as not to bring discredit on the House; or (b) violations of more specific House rules or statutes in effect at the time of violation; and
2. There is a reasonable basis for believing the allegations may be true. In other words, the allegations are not unsupported rumor or malicious imagination; they raise reasonable suspicions requiring further investigation.

The Committee does not sit at the outset as a judge of private complaints such as this one. Its obligation, owed to the House and to the country, is to itself investigate any allegations satisfying these two conditions. It follows from this that, even in cases where there is an active complainant, the Committee cannot sit back and rely on the complainant to furnish the full factual record. If the allegations set forth by Common Cause satisfy the two conditions set forth above, the Committee has a duty to supplement the complainant's limited ability to investigate factual questions. The fundamental responsibility is, and always has been, the Committee's—once allegations are made satisfying the two conditions above. That burden has been met in this case.

A. The Allegations Set Forth Significant Violations of Existing Standards of Conduct.

The jurisdiction of the Committee under Rule X, Clause 4 includes investigations of "any alleged violation, by a Member . . . of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member . . . in the performance of his duties or the discharge of his responsibilities. . . ." The Committee's jurisdiction includes investigating alleged violations in years prior to 1968 of standards of conduct in effect at that time; no one wanted to continue the prior procedure of appointing a separate select committee for that purpose. The Committee is, of course, not to conduct any investigation of "any alleged violation of a law, rule, regulation, or standard of conduct not in effect at the time of the alleged viola-

tion." This provision of the Rule does not shield acts which were improper when committed or limit investigations to violations of Rule XLIII alone. It simply protects acts that were entirely legitimate when they were done (such as nondisclosure before Rule XLIV became effective).

There has been no time in the history of the House of Representatives when applicable standards of conduct did not include familiar ethical standards prohibiting conflicts of interest and self-profit by use of official position. More specific rules have been added in comparatively recent years. But the basic rule has remained throughout the years that one should not bring discredit on the House by using one's position in the House for personal gain or by acting in a situation where the conflict of interest was extreme enough to give the appearance of financial self-serving to reasonable men.

The precedents establishing this continuing standard of conduct were collected by the Select Committee in *In Re Adam Clayton Powell*. For example, over one hundred years ago Rep. Oakes Ames was severely censured and almost expelled for intentionally placing other Members in a situation of conflict of interest by selling them at par value (well below true value) shares of stock in a corporation (Credit Mobilier) they might well be called upon to regulate. In 1929 Senator Bingham was censured for bringing a Representative of the Manufacturers Association of Connecticut (Eyanon) onto his office staff and into secret meetings of the Finance Committee in connection with assisting the Senator on a pending tariffs bill. Senator Bingham's honest intentions were not a defense. As the Select Committee reported in the *Powell* case:

The Senate adopted a resolution of censure providing that Senator Bingham's conduct regarding Eyanon "while not the result of corrupt motives . . . is contrary to good morals and Senatorial ethics and tends to bring the Senate into dishonor and disrepute. . . ."

The same standards of conduct were applied to Mr. Powell's misuse of his official authority with regard to airline tickets and staff salaries. This fundamental rule has since then been supplemented by a more specific "Code of Ethics" and "Code of Official Conduct." But the wording and legislative history of the resolution creating this Committee leaves absolutely no doubt that the very basic standards of ethical conduct have remained applicable and enforceable for more than a century.

In 1968 when the Committee on Standards of Official Conduct summarized, by a chart, the grounds for enforcement action, it listed before any other, "charges of violation of ethics." Report at page 45.

We have set forth in our complaint more specific provisions of the 1958 "Code of Ethics for Government Service" (the 1968 Committee Report stated "members of Congress . . . are Subject to [the Code] . . ." Report at p. 36; see also p. 44) and of House Rules XLIII and XLIV. Wholly aside from these provisions, this Committee would have to apply the fundamental and historic standards of conduct to the following factual allegations, without regard to the complex web of possible motivations of the member.

1. A member who is a substantial shareholder in a closely held corporation may not, especially without disclosing his self-interest, knowingly use his position to sponsor and lead passage of legislation, a major effect of which is to grant federal property interests to that corporation.

a. The violation is compounded if the member intentionally and knowingly hides and denies the effect of the legislation on his corporation for years thereafter, although he knows that was part of the purpose and effect in passing the bill.

2. A member who has used his official position to attempt in a variety of ways to obtain necessary governmental permits and insurance for a prospective bank may not thereafter knowingly accept any private benefits from the owners of the bank, including a right to acquire privately held stock in that bank.

a. The member's conduct is, of course, even more seriously censurable if he anticipated becoming a shareholder at the time of assisting the bank.

b. The member's conduct becomes criminal (18 U.S.C. 201) if he knew he was to receive a benefit in compensation for his use of official position.

The Committee may, of course, conclude and rule publicly that neither of these constitute censurable conduct—that a Representative is free to do either. We believe that would be profoundly wrong, but it is for the House and the public eventually to judge such basic ethical questions. If, on the other hand, the Committee agrees with us that these are ethical violations of the plainest sort under standards of conduct applicable for over a century, it must then address the second requirement for an investigation: "Is there a reasonable basis for believing the allegations warrant further investigation?"

B. There Is a Reasonable Factual Basis for Believing the Allegations Warrant Further Investigation.

It is this Committee's affirmative responsibility to investigate once allegations of substantial violations of standards of conduct are made, if it is clear that there is adequate factual reason to suspect that the allegations may be true. It is not the responsibility of a complainant to establish the facts before a passive tribunal of colleagues. This is totally inconsistent with the Committee's power and duty to investigate and its power and duty to control the conduct of the investigation.

We believe the necessary facts are established with respect to a number of charges (e.g., the violations of Rule XLIV). As to others, the situation arouses such reasonable suspicion of wrongdoing that only an investigation can secure public confidence in the House. We will discuss two of three allegations here.

1. The Allegations with Regard to Holiday Isle.

The charge in the complaint relating to Holiday Isle turns on a key factual question: Did Representative Sikes know that the 1962 legislation which he sponsored and shepherded through the Congress was intended to eliminate certain Federal impediments to land owned by a corporation (CBS) in which he had 25 percent of the equity? He says flatly that he did not know this. If that is the truth, the conflict of interest remains, but the moral culpability is substantially reduced.

On the other hand, if Representative Sikes has known since 1962 that the statute covered CBS land, the picture is very different and the implications particularly grave. Representative Sikes would have falsely told this committee that "I didn't consider that this leasehold would be affected by the legislation." It would be plain that he similarly knowingly and intentionally failed to inform and in fact misled his colleagues in both Houses on a matter highly material to them and to the reputation of the Congress: that a substantial part of the benefits of the legislation would go to the bill's sponsor and important supporter (Representative Sikes). If Representative Sikes knew his bill would affect CBS, the continuing concealment of the fact that his corporation was one of the main beneficiaries demonstrates the Representative's recognition that he was involved in a transaction embarrassing to himself and not creditable to the House of Representatives. Indeed any con-

cealment, even in recent years, in and of itself constitutes a violation of applicable standards of conduct.

Finally, there is no basis for Representative Sikes to claim the protection of lapse of time, since passage of the statute in 1962, if he has been knowingly concealing his conflict of interest throughout that period. As late as last year Representative Sikes was expressing doubt about the coverage of Holiday Isle property by the 1962 Act. *If he knew the scope of the Act's coverage from the time he sponsored it and has nonetheless, until very recently, hidden from others the fact that his bill bestowed benefits on his corporation, he should not be heard to complain of delay by others in considering this matter.* If Representative Sikes has falsely concealed for more than a decade the conflict of interest, action relatively soon after his concealment ends is all the promptness one can expect. And action at that time is doubly necessary or the concealment too will be rewarded.

The law is clear furthermore that time delays occasioned by concealment are not valid grounds for dismissal of a noncriminal charge. It is a fundamental principle of equity that "if material facts are concealed or misrepresented by a suspected wrongdoer . . . the wrongdoer cannot obtain any advantage resulting from lapse of time." *Potash Co. of America v. International Minerals & Chemical Corp.* 213 F.2d 153 (1954). The Supreme Court has declared that disciplinary proceedings by either House of Congress are not criminal in nature. *In Re Chapman*, 166 U.S. 661 (1897).

The simple factual question—whether Representative Sikes knew in 1962 and has known ever since that the CBS "leasehold" would be affected by the legislation—must thus be resolved.

If Representative Sikes knew that the CBS property (Holiday Isle) was held under and subject to the conditions of the 1948 statute and if he knew that all land covered by the 1948 statute was benefited by the 1962 statute, then he knew that the CBS property was granted a benefit in 1962.

Representative Sikes, one of the four owners of CBS in 1962, surely knew that the land CBS held was granted by and subject to the restrictions in the 1948 legislation which he had introduced. Representative Sikes has not denied that he knew the CBS property was held under the 1948 statute.

The coverage of the 1962 statute, also introduced by Sikes, is defined on its face, and in its opening clause, in terms of all of the land conveyed in the 1948 statute. Representative Sikes claims that he believed that somehow less than all of the land covered by the 1948 statute received the benefits of the 1962 statute, despite the fact that the coverage of the 1962 statute is defined simply in terms of the title of the 1948 statute.

There is no room left for honest mistake here.

Furthermore, the issue of whether the 1962 legislation covered the Holiday Isle property was specifically raised just two years later in a series of stories in the Tampa Tribune concerning Sikes' land holdings. A December 13, 1964, article, for example, stated:

"Sikes introduced and helped pass legislation which has enhanced greatly the financial potential of a two-mile strip of Gulf beach peninsula land."

"Sikes says he cannot fix a value on that land which is held by the CBS Development Corporation."

"The combination of the new lease given the CBS corporation and the removal of the government restrictions by Sikes' legislation gave the CBS corporation a free rein on what it could do with the two-mile strip of valuable property."

Representative Sikes can hardly argue he was unaware of these allegations, since the December 13 article itself indicates Repre-

sentative Sikes was interviewed at length prior to publication of the article. More importantly, the Tribune on September 2, 1965, published a front page retraction and apology to Representative Sikes due to errors that "Congressman Sikes pointed out," and referred to assurances—which proved incorrect—from the Okaloosa Island Authority. Thus, despite the fact that the Tampa Tribune article was accurate in stating that Representative Sikes introduced and helped pass legislation of financial benefit to CBS—and himself—a retraction of that statement was successfully obtained by Sikes.

If, as Representative Sikes claims, he never intended and did not believe the 1962 legislation covered the Holiday Isle property, the December 1964 article certainly would have led him to check the accuracy of the article's allegation that Holiday Isle was included within the Act's coverage. A quick check of the legislation—and the deed conveying the land pursuant to the Act—would have clearly revealed the legislation covered Holiday Isle. Nevertheless, the process of denial continued when the retraction was issued by the Tampa Tribune.

As recently as May 30, 1975, Rep. Sikes, in a speech before the Northwest Florida Press Club, claimed that there was still the possibility that Holiday Isle was not included in the legislation and that this "could mean a cloud on the title and a further bill could be required for clarification". Rep. Sikes and the CBS Development, however, never acted during the period from 1962 to 1975 on the assumption that the restrictions and the reverter clause were still in effect on Holiday Isle.

After the Press Club Speech, the Holiday Isle Leaseholders' Association demanded from Rep. Sikes a "proper and immediate public clarification" of statements Rep. Sikes made concerning the possibility of a cloud on Holiday Isle property titles. A letter written in 1975 by Holiday Isle Leaseholders Association President Frank H. Beaumont said in part: "We are shocked and outraged at your public statements that our leased homesites bought from you and CBS Corporation have clouds on their title. Surely you have other answers to the recent newspaper charges than one that admits you knowingly took our money for bad leases. We demand a proper and immediate public clarification from you to all lawyers, real estate brokers and title insurance companies in Okaloosa County."

The current Holiday Isle Leaseholders Association President Ann Suters has reported that prior to the Press Club speech they had never heard of any possible cloud on their titles and they remain confident that their titles are clear.

In conclusion, we believe the case is overwhelming that Rep. Sikes has always known the full coverage of the 1962 statute. Certainly, at the very least, an investigation is called for if the Committee has any remaining doubts.

2. The Allegations with Regard to the First Navy Bank.

Our complaint and opening statement establish facts which we believe are essentially uncontested. They show that Representative Sikes accepted the much-sought-after benefits of an opportunity to participate as a substantial owner of stock in a closely held corporate banking business after first exercising the influence of his official position on a number of occasions to help obtain the necessary government permits and insurance for the bank to be established on Pensacola Naval Air Station. House Rule XLIII (3) is simply one expression of a long-accepted standard of conduct that forbids accepting personal benefits following the furnishing of official services (compare 18 U.S.C. 201) and from the beneficiary of those services. The appearance of wrongdoing in

any such situation is so striking as to bring discredit on the House.

Far less serious conduct was considered censurable because of the discredit such appearances of impropriety brought to the Senate in the case of Senator Bingham even if his actions were not "the result of corrupt motives" (H.R. Rept. No. 27, 90th Cong., 1st Sess., at p. 26). But in this case there are additional and important factual questions as to whether the appearance of even more serious wrongdoing may not be an accurate one. The Committee has an obligation to establish: whether Representative Sikes had an expectation of participating in the First Navy Bank when he intervened on its behalf; whether his participation was granted as a reward for his efforts; and whether he did or should have known that the participation was to be a reward for his efforts.

CONCLUSION

Common Cause has set forth allegations that more than satisfy the requests for an investigation to take place. We submit that the House Ethics Committee has a clear duty to proceed to an investigation of these matters and to make findings which are subject to ultimate review by the full House of Representatives.

ON ASSISTING THOSE WITH HEARING AND SPEECH DIFFICULTIES

HON. EDWARD I. KOCH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. KOCH. Mr. Speaker, the Manhattan Eye, Ear, and Throat Hospital has brought to my attention that the month of May has been celebrated throughout the United States as Better Hearing and Speech Month. Today, more than 10 percent of our total population—and 1½ million individuals in New York State alone—are afflicted with speech and/or hearing impairments which seriously affect their educational, vocational, personal, and social functioning and adjustment. This month is designated to highlight their needs.

Agencies such as the Manhattan Eye, Ear, and Throat Hospital in New York provide invaluable services and substantial financial savings through early detection and treatment of speech and hearing disabilities. For, unless problems in an individual's ability to communicate are discovered at an early stage, affected children find themselves unable to cope with the requirements of school. And, as adults, they are incapable of holding positions commensurate with their skills and abilities. These potential difficulties are the ones that the hospital seeks to minimize through its comprehensive rehabilitation programs.

Speech and hearing disabilities are indeed handicaps, but they need not preclude leading a full and productive life. I salute agencies such as the Manhattan Eye, Ear, and Throat Hospital which strive to restore the communicative facilities of speech- and hearing-impaired individuals, and I applaud the individuals and organizations who are working to

focus the public's attention on Better Hearing and Speech Month.

CONSUMER COMMUNICATIONS REFORM ACT

HON. TIMOTHY E. WIRTH

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. WIRTH. Mr. Speaker, for the past few months the American Telephone & Telegraph Co.—A.T. & T.—and the U.S. Independent Telephone Association—USITA—have been visiting many of our colleagues urging them to cosponsor the Consumer Communications Reform Act of 1976, a bill which the telephone companies themselves have authored and titled. To date, more than 100 Members have put their names on the "Bell bill."

While the sponsors of this legislation have undoubtedly acted with good intentions, I am concerned that some may not have been provided with the complete details of the issue of competition in the telephone industry.

As a member of the Subcommittee on Communications, I would say to my colleagues that this is an extremely complex issue and one which requires careful study and analysis before we even consider legislation of the nature A.T. & T. has proposed.

Since this is a subject about which there has been little information available, beginning today I intend to bring a comprehensive perspective on the issue of competition to my colleagues' attention.

As introductory reading, I would commend the article which appeared in Business Week on March 15, 1976, which provides a good overview of this matter.

On Tuesday, I will call my colleagues' attention to an address made recently by Federal Communications Chairman Richard E. Wiley before the 29th annual conference of the International Communications Association. In his remarks, Chairman Wiley traces the FCC and judicial decisions which led A.T. & T. to seek legislation prohibiting competition in the telephone industry.

On Wednesday, I will refer my colleagues to a speech I delivered to a Bell executive seminar in Princeton, N.J., on the subject of this legislation. Most of the thoughts expressed in my speech were based on information gathered during hearings held last November by the Subcommittee on Communications. I would also urge my colleagues to read the transcript of those hearings in order to put the Bell legislation in perspective.

On subsequent days, I will include further information which should provide a useful background for all of us who will be considering this important issue.

A.T. & T.'s Bold Bid To Stifle Competitors

Within a month virtually all the major telephone companies, led by American Telephone & Telegraph Co., will loose an all out political effort on Capitol Hill to reverse re-

cent regulatory and judicial decisions that have opened parts of their \$40 billion industry to competition. "We have decided the time has come to call the public's attention to its stake in the matter," says AT&T's outspoken chairman, John D. DeButts.

In the past few years AT&T's tough boss has taken a progressively harder public line against decisions handed down by the Federal Communications Commission, specifically against policies that led to the introduction of limited competition in telephone products and in specialized private-line services. Now he is convinced that he has to throw down the gauntlet.

DeButts' gauntlet is a startling request to Congress to pass a law that would stop competition in long-distance services, permit AT&T or other traditional carriers to acquire the companies that would be put out of business, and revoke the FCC's jurisdiction over technical and operating standards that affect terminal and accessory equipment attached to local telephone company facilities. Such legislation would, in effect, stop a burgeoning industry, with a multibillion dollar potential, dead in its tracks.

Pressure for such legislation has built up slowly in the past few years in the telephone industry, particularly at Bell headquarters in New York City. AT&T has suffered a long series of reversals at the hands of Washington regulators, and generally the FCC decisions that AT&T considers adverse have been upheld in federal courts. Beyond that, a massive antitrust suit by the Justice Dept. seeks to separate AT&T's operating companies from its manufacturing subsidiary, Western Electric Co., and its Long Lines Dept.

Caught in a tightening vise, AT&T's chairman decided to turn to legislation as a final resort. He hopes his industry will be able to persuade Congress to change the rules in its favor and disarm both the Justice Dept. and the FCC. Furthermore, new laws would help the company to head off the FCC before it can consider a blockbusting series of recommendations served up by its AT&T trial staff on Feb. 2.

The FCC's trial staff, backed by a special 50-man task force that has been working since 1971 on a review of Bell's rates, market behavior, and financial structure, is calling for a massive reduction in AT&T's rate base, asking for a major revision of the company's accounting practices, and—in agreement with the Justice Dept.—recommending divestiture of Western Electric. It also concludes that competition has been beneficial for AT&T, and has led to improved performance.

THE BUILDUP

For some months AT&T and the independent telephone companies, including such majors as General Telephone & Electronics, United Telecommunications, and Continental Telephone, which do not always see eye to eye with Ma Bell, have been preparing suggested legislation. According to a group of key industry executives that met with Business Week reporters on Feb. 20, that job is finished. All that remains is to polish the text into the form of a bill and to line up congressional sponsors. The industry hopes to get "at least 50" cosponsors to push its legislation through. According to Edward B. Crosland, AT&T's smooth, Virginia-bred senior vice-president, who is quarterbacking the legislative effort, the telephone companies would like hearings in May and hope that the bill will be brought to a vote this summer. Whatever the timetable, the industry's strategy amounts to its most daring political power play since the passage of the Communications Act of 1934.

Washington regulators are in a state of dismayed anticipation. AT&T is widely respected for its political muscle, although it seldom flexes it on a national level. Says FCC Chair-

man Richard E. Wiley: "I'm truly sorry to see this coming. I don't think new legislation is really necessary, because all the issues involved could easily be settled in cases now before the commission or awaiting court decisions." FCC Common Carrier Bureau chief Walter R. Hinchman points out that several key issues are scheduled for decision in the next 18 months.

No telephone industry representatives have yet officially consulted the FCC about the proposed bill, nor made the industry's intentions clear to the Office of Telecommunications Policy, the arm of the White House that has generally applauded the FCC's decisions to encourage competition and limit extension of Bell's monopoly into new products and new services. The OTP, like the FCC, would like to avoid an election year confrontation, and neither the FCC's Wiley nor the OTP's acting director John M. Eger believe the complex issues at stake can be adequately debated under high political pressures.

THE ISSUES

Because they have not been consulted officially and do not have a final copy of the industry's bill in hand, many regulatory officials hesitate to comment for the record on what they know of the industry's legislative plan. Most are aware of the gist of it, however.

For several months now, AT&T, the U.S. Independent Telephone Assn., and key members of the National Assn. of Regulatory Utility Commissioners, who oppose federal regulatory jurisdiction over any utilities have been circulating a white paper entitled "The Crises in Telecommunications." It summarizes the gut issues that the telephone companies will highlight and spells out the basic legislative revisions of the Communications Act that the industry wants. AT&T's Crosland and independent telephone company executives say the white paper provides an accurate description of their proposed legislation.

The two major elements would affect competition in different ways:

PRIVATE LINE SERVICES

The industry proposes to declare long distance services at utility function, to be served by a single, integrated system. That would reverse the FCC's controversial decisions to allow limited competition in specialized private line toll services by both terrestrial and satellite carriers. Communications attorneys point out that such an action would make AT&T's Long Lines Dept. a de jure monopoly rather than one that has evolved over the years as a practical extension of the traditional monopoly granted local telephone companies by laws now on the books.

The effect of such action would be to force such companies as Microwave Communications, Datran, and Southern Pacific Communications out of the business. So the planned legislation would immunize AT&T from antitrust sanctions, enabling it to acquire its erstwhile competitors. A job protection clause would guarantee employment to workers affected by acquisitions.

The legislation would also bar competitive services by satellite carriers now in operation or planned by such companies as RCA Global Communications, American Satellite, and Satellite Business Systems (the consortium of IBM, Comsat General, and Aetna Life & Casualty that plans a digital data and voice system for business).

The legislation would permit newcomers to provide services that did not in any way compete with regulated carriers. But telephone industry spokesmen cannot give any examples of unique and viable services that their own systems could not provide with advanced technology.

COMMUNICATIONS EQUIPMENT

The telephone industry's legislative strategy in this area seems intended to confuse

rather than actually bar competition in communications hardware. The operating companies are fearful of too rapid disruptions from competition in ancillary telephone equipment such as extension telephones, large and small automatic switchboards, facsimile machines, and data processing equipment attached to telephone lines. So the industry proposes to give state utility commissions, instead of the FCC, regulatory control over customer-owned equipment. That could mean that telephone answering machines or data terminals might be legally connected to phone lines in some states, but not in others. This would load a complex set of new responsibilities on state utility commissions, which are notoriously understaffed and are responsible not only for telephone regulation, but for rates and standards for electric power companies, gas companies, water supply, and a potpourri of other activities. The telephone companies and regulators are well aware of the difficulties any national distributor of competing products would have in an environment involving 50 regulatory dominions.

While Federal regulators are keeping a low profile until the legislation surfaces in Congress, some competitors in the industry already are howling. Says William G. McGowan, president of MCI Telecommunications Corp., one of the companies that would be wiped out: "The proposition that this legislation would benefit the consumer is no more than the traditional big lie of the monopolist who is afraid of competition because he knows it will make his life tougher." Even some state regulators familiar with the issues see the legislation as regressive. "DeButts would love to turn the clock back to 1967" says James McCraney, chief communication engineer of the California Public Utilities Commission, referring to the era before the FCC's pro-competition moves. "But it's not going to put us back. I think competition is here to stay as far as hardware is concerned."

WAITING

Large corporations that would be hit by the proposed legislation are also waiting quietly before they get snarled in the fight. Spokesmen for IBM, IIT, and RCA all say their companies are concerned about the telephone industry's intentions, but prefer to withhold comment until the legislation is introduced in Congress. Says an RCA official: "So far this affects only a small part of our business directly. We are hardly into it yet. AT&T is a big company, and we'd rather not provoke a fight."

In the lull before the storm, there seems little doubt that AT&T's big competitors will be willing to defend their new turf, if necessary. The Computer & Business Equipment Manufacturers Assn. and IBM are fighting AT&T before the FCC over Bell's bid to supply, under telephone tariffs, an electronic data terminal with computer-like memory and logic called the Teletype Model 40. The crux of their argument is that telephone companies can extend the services of their basic monopoly simply by tariffing new devices or services. Once such tariffs are approved and have the force of law, the telephone companies can then justifiably claim they are common carrier services that can be provided only by regulated communication utilities. Then the computer industry fears that many of its competitive products and services are endangered by the slowly spreading territory of the telephone monopolies.

Telephone industry spokesmen deny they are extending their monopoly through new tariffs. They point out that Teletype, with its printers and keyboards, is a service of long standing. But they are also quick to deny competitors new access to their own businesses. The basic issue, they claim, is that their revenues should be protected from erosion by competition in order to support basic

telephone service, which under law they are required to supply to all subscribers.

The telephone industry has united behind the warning that AT&T's deButts spelled out in a recent speech at Fordham University: "Were the telephone companies deprived entirely of the contribution to common costs that revenues from their more discretionary services provide, they would face the necessity of increasing the average residence customer's bill for basic service as much as 75%."

The independent telephone industry backs AT&T's estimates with a private study by a California consultant in San Rafael called Systems Applications Inc. The group issued a press release last month covering the study, and headlined it, "Federal regulatory policies on telephones will hurt consumers." The text of the release warns: "So-called competition will cause rate increases of 60% to residential users and 56% for business users of basic service within the next 10 years."

Yet AT&T's deButts concedes in his same Fordham talk that the 75% rate increase he warns of is "highly unlikely." The independents' study also cautions that "there are many other avenues of analysis that should be explored."

Telephone industry spokesmen admit that deButts' 75% figure and the group's 60% figure are extreme examples that assume phone companies will lose nearly all of their toll and equipment revenues. But the frightening numbers have been effective, so far, in lining up both Congressional and labor union support for the coming Capitol Hill test. The Communications Workers of America, which usually backs AT&T in regulatory disputes, as well as the International Brotherhood of Electrical Workers, want to support the legislation.

DATA IS NEEDED

Regulators believe that the claims of the telephone companies are exaggerated and resent being blamed for conditions they do not believe will come about. They fear the threats of rate increases may cause a consumer outcry that might have a devastating effect on Congress, where there is little knowledge of the complexity of the issues. While regulators believe that their decisions will lead to lower telephone bills, they are as hard put as the phone companies to come up with data to prove it. Historically, cross-subsidies between different services and equipment have grown with the telephone industry into an impenetrable maze that neither the phone companies nor the regulators can sort out.

The heart of the telephone industry's argument is that the revenues from long distance calling and from accessory equipment such as extensions and switchboards, help to pay for basic telephone service—particularly residential customers. Endangering such high-profit revenues, they claim, would result in higher phone bills. But the industry has not been able to prove its case with data that satisfies its regulators. For example, a current study by the New York State Public Service Commission contradicts the phone companies. It finds that basic telephone service subsidizes accessory equipment. As a result, the commission is requiring New York Telephone Co. to apply most of its rate increases to such equipment to rectify the inequity.

Sums up John Eger, of the Office of Telecommunications Policy: "There is simply no reliable evidence of any adverse impact from competition on local exchange rates, either now or in the future." Both Eger and the FCC's special AT&T trial staff insist that the telephone companies must alter their accounting procedures so that such things as cross subsidies and intercompany transfers of toll revenues are subject to reasonable audit.

Shared revenues between AT&T and the independents are vital to cover local phone system service costs. Some independent telephone companies depend for as much as half of their total revenues on the cut of long distance toll revenues they receive from AT&T Long Lines. But such "toll settlements" are reached by arbitrary formulas or individually negotiated contracts. In 1973, according to the FCC's trial staff, fewer than 10% of the more than 200 toll settlement agreements then in effect were audited.

In a kind of Catch-22 argument, the telephone companies say their toll agreements are always approved by the regulators and claim their accounting is unique because the regulators demand that they use the Uniform System of Accounts, a system that has not changed significantly since the turn of the century. Yet both regulators and phone companies agree that the uniform system is not equipped either to handle the systemic and technological changes that have occurred or to adapt to modern computerized auditing and accounting practices. "It is a dilemma," admits the OTP's Eger.

Eger, who has watched the regulatory scene heat up since 1968, when the FCC began to approve competitive participation in the telecommunications industry, is convinced a new era is beginning that will be very different from the first 100 years of the industry, when it was essentially building a universal basic service. He quotes from a 1974 speech by deButts: "The second century of the industry is going to have to be devoted not to further extension of basic service—that job has essentially been done—but to the searching for and satisfaction of a wide diversity of new service demands." Says Eger: "That's a job for which market competition is better suited than monopoly."

BATTLE JOINED

In Washington, few think Congress is prepared to debate the issue of monopoly or competition in the new communications environment. Congress has seldom shown any more interest than a cursory look at the FCC, and those looks have generally been more concerned with regulation of broadcasting than the quiet and complex workaday problems of telephone regulation. But soon the battle will be joined. Says AT&T's deButts: "However these matters are eventually resolved, the Bell System will accommodate itself with good grace to the public's decision."

At this point, no one can predict how Congress will react. But when it comes to the hard choice between monopoly and competition some strange bedfellows can pair up. FCC watchers remember that Chairman Dean Burch, a conservative Republican, and Nicholas Johnson, perhaps the most liberal Democrat ever to occupy a commissioner's office, never agreed about anything political, but they voted alike when it came to favoring competition over regulated monopoly. If the same liberal-conservative pairing happens in Congress as it did in the FCC, the coming debate could turn into deButts' last stand.

SRI LANKA ANNIVERSARY

HON. PAUL N. McCLOSKEY, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. McCLOSKEY. Mr. Speaker, I would like to take this opportunity to honor the fourth anniversary of the founding of the Republic of Sri Lanka on

May 22, 1972. This event is particularly appropriate in our own Bicentennial Year since Sri Lanka and the United States share a common heritage of democracy.

Before the next Republic Day is celebrated in Sri Lanka in 1977, the country will have its seventh opportunity since regaining its independence in 1948 to elect by the free exercise of adult universal franchise, a new government.

The warm relationship between Sri Lanka and the United States is a hopeful sign for the growing interdependence between developed and developing nations which must exist if we are to maintain peace throughout the world.

In August of this year, Sri Lanka which has long been a leader in the group on nonaligned nations will host the fifth nonaligned Summit Conference—the first time such a summit has been held in Asia. The meeting which will be a focal event in the third world will be attended by the leaders of over 80 nations and will take place in the Conference hall dedicated to the memory of the late Prime Minister Mr. S. W. R. D. Bandaranaike—the architect of Sri Lanka's nonaligned foreign policy—and will be chaired by his widow, the present Prime Minister, who has had the distinction of leading Sri Lanka's delegation at every nonaligned summit meeting since 1961.

Sri Lanka's reputation for international diplomatic leadership has been recognized by the election of Shirley Amerasinghe as president of the 150-plus nation United Nations Conference on the Law of the Sea.

President Amerasinghe's quiet and patient leadership is credited with a substantial part of the progress made by the recent New York session of the conference, and in particular, for the new single negotiating text on dispute settlement.

Likewise, the work of another Sri Lanka diplomat, Chris Pinto, has provided a major contribution to the deep seabed mining portions of the treaty.

If the world is privileged to finally achieve a comprehensive LOS Treaty next year, the Sri Lanka contribution may well turn out to be as great as that of any of the participating nations.

As a developing country, Sri Lanka has been buffeted by the worldwide inflation and catastrophic consequence of the increases in import prices. Nevertheless, heroic efforts are being made to achieve a viable economic structure and the recently concluded land reform was a milestone in this direction. This measure asserted the economic independence of the island, and the sense of moderation displayed in the compensation negotiations that were finalized is an object lesson for the rational dialog that is possible between developed and developing countries. Another major achievement has been the inauguration of a gigantic multipurpose river diversion project whereby the waters of Sri Lanka's longest river, the Mahaweli, will be diverted into the arid dry zone of the country. State I, project I of the massive multimillion-dollar project has been completed. The country has commenced the construction

of a urea fertilizer plant and Kellogg International Corp. of the United States has won the contract for this \$92 million project which will provide the full requirements of urea for the agricultural sector of Sri Lanka. Sri Lanka is also exploring for oil and Pexamin Pacific, Inc.—a group of companies operating in the United States, Europe, and the Pacific regions—have been appointed as consultants to provide the necessary expertise.

Sri Lanka's social and economic development has been distinguished by a dramatic decrease in the rate of population growth. In 1974, the figure for the increase of population was as low as 1.6 percent which must surely be a record for developing countries. The finance minister in the budget which he presented in November 1975 signaled the emergence of strongly pragmatic policies, asserting a role for the private sector and welcoming the infusion of foreign private capital into the economy of Sri Lanka. A foreign investment law and the creation of a foreign investment authority to give legal form to the inducements for foreign private capital are being formulated. Sri Lanka is strenuously pursuing her objective of achieving economic development together with greater equality in the distribution of income. The share of the income of the poorest 40 percent of inhabitants has risen since 1963 from 14 to 19 percent in 1973. Correspondingly the share of income received by the top 10 percent has declined from 37 to 28 percent during the same period.

The United States continues to be an important donor of development assistance to Sri Lanka and in 1976 an agreement was signed under Public Law 480 for the sale of 100,000 tons of wheat flour to Sri Lanka. Trade between the two countries in 1975 expanded with imports by the United States increasing by 15 percent and U.S. exports to Sri Lanka increasing by over 69 percent. Sri Lanka also continues to be a popular tourist resort by virtue of its unique beauty. In a recent birthday message to Mrs. Sirimavo Bandaranaike, the Prime Minister of Sri Lanka, President Ford said:

Under your distinguished leadership Sri Lanka continues to play an important and constructive role within the family of nations—underscored by the fact that Sri Lanka will be host this summer to the Non-Aligned Summit Conference. Your birthday provides a welcome occasion to reiterate my personal satisfaction and that of the American people with the friendship and cordial relations that exist between our two democracies. I have every confidence that this friendship will continue to prosper.

I am pleased, Mr. Speaker, to add at this point my own warm personal regard for Sri Lanka's Ambassador to the United States, the gracious and distinguished Neville Kanakarathne.

Together, may the friendship and economic interdependence between our two nations continue to assist the world's search for peace under world law and a decent respect for the rights of individuals.

ROLE, REQUIREMENTS, AND POSITIONS OF THE U.S. NAVY TODAY

HON. G. WILLIAM WHITEHURST

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. WHITEHURST. Mr. Speaker, I have a transcript of remarks made by Adm. James L. Holloway, the Chief of Naval Operations, before the Navy League National Convention in Boston on May 21, which I respectfully submit for the RECORD. Admiral Holloway's address concisely discusses the role, requirements, and position of the U.S. Navy today, and should be of interest to my colleagues:

It is a great pleasure for me to be here with you tonight at this National Convention of the Navy League of the United States. It is fitting, I think, that in our nation's Bicentennial year, we meet in Boston where so much of the American Revolutionary movement began.

Since pre-Revolutionary days, Boston has been a city closely tied to the sea. This was the site of my first active duty as a naval officer as it has been a duty station for so many of our career personnel over the years.

Tonight I am going to talk to you about the Navy, taking up where the Secretary of the Navy left off. To understand the Navy one must first put into perspective our total national defense needs.

There is consensus that U.S. military capability and strength today can be described as "sufficient." That is, we have "rough equivalence" to the Soviet Union and this essential equivalence is the foundation we must maintain.

However, the trends of the past 5-10 years are adverse with respect to the military balances. No one chart or statistic can provide the complete picture—but a sweeping look at resources, procurement, research and development, construction, and force levels can make clear what has taken place.

The facts drive one to the inevitable conclusion that the U.S. must act now to arrest these adverse trends, by providing real increases for national security. Unless we act the United States will find itself in the position of having to alter its policy of maintaining rough equivalence with the Soviet Union. I share the conviction of the President and the Secretary of Defense that the American people are not willing to accept a policy of inferiority.

Our National Defense Policy and Defense Budget for the coming fiscal year reflect the deep concern of our nation's leaders for the security of our country. They are advocates of strength, and deterrence through strength is the heart of our defense strategy.

I don't believe there is any question in the minds of responsible persons, that the United States needs a Navy. But there is debate centered around what kind of a Navy, and how large.

The mission of the Navy is to conduct prompt and sustained combat operations at sea in support of our national interests.

To carry out this mission the United States Navy needs ships, aircraft and people. It needs ships and aircraft individually capable of coping with the weapons systems technology that they may face in future battle, and competent and professional people who can maintain and operate those ships and aircraft to the limit of their design capabilities. We must have enough of those ships, aircraft and people to constitute a fleet, which, in coordination with our other serv-

ices and in combination with our allies, can defeat the total maritime forces of our potential adversaries.

At no time since World War II has the role of the United States Navy been more important to our national defense than it is today. The military strategy of the United States is a forward strategy. It is overseas oriented, driven by basic geopolitical considerations. There are two superpowers, the United States and the Soviet Union. The Soviet Union dominates the Eurasian land mass. Her allies, the WARSAW PACT nations, are contiguous to her western border. Her principal adversaries, the People's Republic of China and NATO Europe, lie on her flanks, adjacent to her borders.

The Soviet Union can defend itself, support its allies, or launch an attack against its principal opponents without ever having to cross a major body of water.

In contrast, the United States is characterized by its insular position on the North American continent. We have only two international borders and not a potential enemy on either one. One of our states, all of our territories, and forty-one of our forty-three allies lie overseas. This forward strategy can be described as one in which we use the oceans as barriers in our defense, and as avenues for extending our influence abroad to those areas around the world in which we have vital national interest.

A forward strategy requires two things, allies and overseas forces—forces deployed to protect our allies and deter potential aggressors.

The Navy's role in this strategy is twofold—to provide components of these overseas forces such as the Sixth Fleet in the Mediterranean and the Seventh Fleet in the Western Pacific and Indian Ocean; and to protect those essential sea lines of communication between the United States and its deployed forces, between us and our allies, and between the U.S. and those areas of the world vital to our national interests, such as the Persian Gulf and South America.

To carry out these responsibilities our fleets must be offensively powerful enough to defeat the enemy forces routinely present in their theater of operations, strong enough to defend against attacks by long-range aircraft, able to project power ashore in support of our allies and our forces, and our fleets require a high degree of logistic independence from overseas bases.

A balanced fleet is necessary to give our Navy these capabilities. There must be balance among types: carriers, surface combatants, submarines, amphibious forces, and support ships. There must also be, within a constrained budget, balance between those very capable multi-purpose ships such as carriers and cruisers, which are relatively expensive, and the single-purpose vessels which, being less costly, can be procured in larger quantities and so provide our fleet with the density of force it needs to be effective on a world-wide basis.

As I have said, I believe there is little disagreement in these basic premises upon which the naval requirements for the United States must rest. The debate lies in the translation from these naval requirements to the military characteristics, or the designs of the specific ships and aircraft, and the number of these which should comprise the operating forces. As in any debate there are two sides. And in the course of this debate, myths have been generated which require a rational response. I think there is no better time or place than this occasion to confront mythology with reason.

There is a myth that the United States Navy as a matter of policy has emphasized its power projection role to the detriment of its sea control responsibilities. In reality, power projection is an essential part of sea control. Our power projection forces consist

of U.S. Marines embarked in Navy amphibious shipping to constitute the nation's only major capability for injecting U.S. ground forces into a hostile environment in an opposed amphibious operation. The second main form of power projection resides in the capability of our carrier-based aircraft to strike targets more than 500 miles away from our task forces with a variety of weapons, conventional or nuclear. The use of carrier aircraft and Marines in the projection of military force can be an absolute requirement in insuring our control, or continued safe use of areas of the high seas essential to our national needs. Long range air strikes contribute significantly to our ability to control the seas by destroying enemy warships at their home bases or enroute to those ocean areas which we desire to protect, before the enemy forces come within range of our own. Marine amphibious forces, supported by carrier air, can seize and hold land areas either to deny them to the enemy for their use in interdicting our sea lines of communication, or to permit our own forces to exploit these areas as advance bases to attack enemy forces which would interdict our own.

This function of power projection as a major component of the Navy's responsibility for controlling the seas is clearly reflected in the assigned functions of the Navy, which are to "seek out and destroy enemy naval forces . . . gain and maintain general naval supremacy, to control vital sea areas and to protect vital sea lines of communications, to establish and maintain local superiority including air in an area of naval operations, to seize and defend advanced naval bases, and to conduct such land and air operations as may be necessary to the prosecution of a naval campaign."

It is interesting to remember that the island hopping campaigns in the Pacific in World War II were not to acquire real estate, but for the sole purpose of seizing advanced bases to gain control of the sea approaches to the recovery of the Philippines and the invasion of Japan.

There is a myth which states that the U.S. Navy's operational concepts are defensively oriented, citing the emphasis on fighter interceptors on our carriers, and surface-to-air missiles on our surface combatants. It is suggested that these aircraft, missiles and ships exist for the sole purpose of "defending the carrier". In reality, these fighters are for the purpose of destroying enemy aircraft or cruise missiles attacking any friendly ships, combatant or commercial, U.S. or allied. The fact that our carrier based fighters are able to effectively intercept targets more than 500 miles away make them effective in destroying hostile threats to friendly forces over large areas of the ocean's surface. The surface-to-air missile systems, such as the AEGIS controlled standard missile incorporated in the design of the strike cruiser and guided missile destroyers, is an area weapon which can intercept and destroy enemy aircraft and cruise missiles, protecting all friendly ships within the envelopes of its effective range. The tactical doctrines of the U.S. Navy emphasize the adage, "the best defense is a good offense." We defend the convoys, amphibious forces, ASW groups, and striking forces by destroying enemy surface ships, aircraft and submarines which have the capability to attack friendly forces at sea. A defense designed and calculated to destroy hostile launch platforms contributes to the overall war fighting objectives of our strategy by destroying the enemy's military forces through which he would wage war.

There is a myth that states that the Navy is concentrating its efforts on the construction of the complex nuclear powered ships, which, because of their expense compares to their conventionally powered counter-

parts, will reduce the total number of ships available to the Navy in a limited budget.

In reality, the Navy's policy for the new construction of nuclear powered warships is straightforward and designed to support a limited but fundamental exploitation of the advantages of nuclear propulsion within the overall requirements of our naval strategy. This policy states that all submarines should be nuclear powered, because with nuclear power the submarine attains the ultimate capabilities of the true submersible. Among surface combatants, only carriers and cruisers should be nuclear powered, and only enough of these to constitute a strategically significant segment of the U.S. operating forces. This would amount to five or six all-nuclear powered task forces, each consisting of a carrier, two to four cruisers, and one to three submarines. These all-nuclear powered task forces would have the ability to steam unlimited distances at high speeds, without the necessity to refuel, replenish or rearm, and arrive at a crisis point ready to conduct combat operations, for a sustained period of time, until the crisis was resolved, or conventional forces with logistic support arrive. Three of these task forces in the Atlantic Fleet for example would permit one to be forward deployed at all times, one to be combat ready based on the U.S. East coast, and the third all-nuclear task force in maintenance.

Our buildup toward this all-nuclear task force capability has been modest. The current Navy shipbuilding program includes only a total of three nuclear powered surface powered surface ships and about 50 conventionally powered surface combatants, including AEGIS destroyers and fleet frigates.

There is a myth that says that the U.S. Navy is outbuilding the Soviet Navy. In reality the situation is this: in the past fifteen years since the Soviet Naval buildup began, the Soviets have delivered to their fleet a total of 1,312 naval vessels and logistics ships. During this same time the U.S. Navy has delivered a total of 326 new ships.

If all the ships constructed over the past fifteen years for the navies of the Soviet Union and the United States are compared, regardless of size, mission, or type, the Soviet Union has clearly produced more ships at a greater dollar cost. However, if from that total list certain categories of ships are selected over specified time frames, for example surface combatants over 3,000 tons constructed between 1970 and 1975, then different stories can be told in each case depending upon the data and the criteria used. What I'm pointing out is that it is easy to manipulate this data to confuse the real issue.

A second point to be made is that the United States is not engaged in a shipbuilding race with the Soviets. What we are determined to do is to maintain maritime superiority in the face of Soviet expansion. Shipbuilding is a part of this. But the strategies of the United States and the Soviets differ. We need one kind of Navy, and they need another. We are each procuring the kinds of ships required for our own particular strategies. Therefore it is not so much who has built the most ships of what kinds, as it is how capable a Navy each of us has to do a particular task. Our analyses indicate that unless we devote more effort to our own Navy, the upward trend of Soviet maritime expansion is going to place our maritime superiority in jeopardy within the next decade.

There is a myth that says the day of the carrier is over. That, like the battleship, it has outlived its usefulness. The realities of the situation are this. The carrier represents airpower at sea. Manned aircraft remain an essential and irreplaceable part of the military force structures of all our services.

Naval warfare includes many subsidiary warfare tasks, and naval aviation is a major

contributor in a number of these. Aircraft are used in an anti-air role to shoot down hostile aircraft and cruise missiles; in an anti-surface warfare role to attack hostile surface ships with bombs and missiles; in an ASW role to detect, localize, and attack submarines; and in mine warfare to implant mines or to conduct mine counter-measures operations. Aircraft have the prime responsibility for early electronic warning of hostile air and surface targets. Aircraft are prime platforms for intelligence gathering through photography and signals intelligence.

There is a myth that says we should build no more carriers because they are vulnerable. In reality carriers are vulnerable, but carriers are the least vulnerable of any surface ship afloat. With its extensive compartmentation, protection, armor, and damage control facilities it is designed to take punishment and fight on. But much more important, the carrier, with its aircraft, reduces the vulnerability and improves the survivability of all surface ships, including itself, the accompanying surface combatants, the tankers, ammo carriers and troop ships.

It has been suggested that because of its large size, a carrier is an easy target for a guided missile. With today's guidance techniques, that provide virtually no miss distance for guided missiles, no vessel on the high seas can escape the effect of such accuracy. But where a single warhead would sink or disable a smaller ship, the carrier can absorb these blows and fight on.

So the carrier is not only the least vulnerable of all surface ships, but also its very presence reduces the vulnerability of the merchant fleet, the protection of which is *raison d'être* for our Navy. As long as we are determined that we are going to move people and resources across the oceans, then we must be prepared to protect them. If in our efforts to protect these vital lines of communication, we lose some ships—merchant and combatant—then so be it. But we must try to protect those ships, otherwise we are defeated before we begin.

In this debate concerning the size and composition of the future Navy, I consistently attempt to relate the composition of the fleet to the needs of the nation, in terms of the force structure that is required to enable the Navy to carry out its responsibilities within the national military strategy. That national strategy is today an overseas-oriented concept. The Navy's principal responsibility within that strategy is to make secure the sea lines of communication so vital to the United States and its allies. To carry out these responsibilities the Navy must be able to control the sea. Not all the seven-tenths of the world surface covered by the oceans, all at one time, but those selected areas of the sea through which we want our friendly forces to pass unharmed. To accomplish this we must have forces that can meet and defeat the total threat which a potential enemy could bring to bear against us.

We know that the Soviets are steadily improving their capability to conduct warfare at sea in open ocean areas, far from their homeland, in all three dimensions: above, on and below the surface. They have a growing force of supersonic naval aircraft capable of delivering air-to-surface missiles against our surface ships over vast areas of the ocean. They are continuing to build large ocean-going, long range surface combatants equipped with anti-ship missiles, and are now completing their third aircraft carrier. And the Soviets continue to produce large numbers of modern nuclear powered submarines of varied advanced designs, many of which are capable of launching anti-ship missiles while submerged.

Our Navy must be able to fight against this array of weapons systems and win. We

cannot make the mistake of overemphasizing any single area of our naval capability. To do so would simply invite the enemy to exploit an area of neglect. We must also be prepared for conflict situations which involve aircraft, surface ships and submarines simultaneously. Experience has shown that is the way that wars are most effectively fought.

The response to this maritime challenge must be to build a superior fleet of balanced forces. We cannot build only carriers because these multi-purpose ships are too expensive to be procured in the quantities required for our global responsibilities. We cannot build only submarines because, although they have no equal in those tasks for which they have a capability, they are nevertheless incapable of doing everything, such as protecting convoys from air attack or providing support to Marines in assault landings. We in the Navy feel that our shipbuilding programs achieve the proper balance among our force types, and between the powerful, expensive, and nuclear powered units and the single purpose less expensive, and more procurable smaller ships.

Debate is healthy, and I welcome this opportunity to clarify the issues. But we must get on with building a fleet. And we must recognize that numbers of ships are only part of the answer. We must have the requisite numbers of individual ships which in themselves have the inherent military characteristics which will in aggregate give us a total maritime force which will permit the United States to carry out its national military strategy.

To maintain an overall level of rough equivalency with the Soviet Union, the United States Navy must maintain its seapower preeminence. The naval programs before the Congress as a result of the President's decisions will maintain that slim edge which the United States Navy now enjoys. I think it is our responsibility as American citizens with an understanding of seapower, and an awareness of the issues, to do our part to insure that we do not now or in the future vacate our position as number one in terms of maritime superiority.

I welcome your involvement and I value your support.

VETERANS' AFFAIRS

HON. JAMES V. STANTON

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. JAMES V. STANTON. Mr. Speaker, I believe our Nation should treat each person who has served in the Armed Forces in a very special way, for these men and women answered the country's call to perform one of the most difficult jobs in the world: A job unusually strenuous and demanding, often requiring prolonged separation from loved ones, risking injury, or death. While the United States has traditionally honored veterans, the fact is that in terms of jobs, health care for the injured and ill, and financial aid for the disabled and aged, the veterans of today often do not receive their due.

Unemployment among veterans should be less than the rate of unemployment generally, yet young veterans age 20 to 24 suffered an unemployment rate in 1975 of about 20 percent, more than double the national rate. Aged and disabled vet-

erans should be better off financially than the population as a whole, yet 24 percent of the families receiving a VA pension have incomes below the poverty level of \$3,410, as compared to the national percentage of 5.4 percent. In large measure, the Government's failure to provide adequately for the veterans is due to the callous, penny-pinching attitude of the current and past administrations, combined with a public desire to forget about tragedies like Vietnam. As a Member of Congress, I have over the past 5 years given my full support to measures to grant veterans the assistance they need and deserve, and I will continue to do so.

THE RECORD EDUCATION

To the young veteran, there is perhaps no program more important than the GI educational benefits. Speaking for myself, I know that without these benefits I would not have been able to complete my education after leaving the Air Force in 1954. Thus I voted for the landmark 1974 legislation increasing the educational benefits by 22.7 percent, and the benefits for on-the-job training and vocational rehabilitation for the disabled by 18.2 percent; extending the period of entitlement for undergraduate work from 36 to 45 months; and extending the time in which the benefits could be used from 8 to 10 years after the date of departure from the service. Congress had cast aside the administration proposal for an 8-percent benefit raise, and so Mr. Ford vetoed the bill, saying it was too costly. I joined with overwhelming majorities in both Houses of Congress to override the veto. I also voted against the Ford proposal to end the benefits program for all who were to enter the service after December 31, 1975.

HEALTH CARE

I voted for the 1973 Veterans Health Care Expansion Act, which requires the VA to staff and maintain enough hospital beds to admit all eligible veterans in need of care, and to double the number of VA nursing home beds. Enactment of this legislation came in response to policies imposed on the VA by the President's Office of Management and Budget which had resulted in nearly half the veterans applying for care having their application rejected. The act was also intended to insure there would be no repeat of President Nixon's 1972 freeze on hiring by the VA, which had a disastrous effect on the quality of care in VA hospitals. The act also extended outpatient care privileges to those veterans currently eligible for hospital care, so that those requiring treatment short of hospitalization were covered. Enactment of this legislation would have come a year earlier, but for the pocket veto of Mr. Nixon in 1972.

In recognition of the serious problem of drug addiction among those who served in Southeast Asia—a House investigating committee estimated that as many as 1 in 10 servicemen had become addicted to heroin—I supported establishment of a special VA program to assist in rehabilitation.

In addition, to assist disabled veterans, I voted for bills approved by Con-

gress to cover their cost in traveling to facilities for vocational rehabilitation, counseling, and health care, and to provide them a grant of up to \$3,300 to pay for special equipment they require for their automobiles. Regrettably, Mr. Ford pocket-vetoed the bill for travel expenses.

DISABILITY COMPENSATION AND PENSIONS

I voted for every one of the bills to provide cost-of-living increases in the rates of service connected disability and dependency and indemnity compensation, and the rates of non-service-connected disability pensions. In the bills enacted in 1975, Congress rejected the Ford proposal to limit the benefit increase to 5 percent and enacted instead an 8-percent increase in the pension rates, and an increase of 6 to 10 percent in the rates of compensation.

JOBS

Both the public service jobs program, under which 300,000 unemployed persons have been hired by State and local governments to perform needed community service jobs, and the comprehensive manpower training act include provisions requiring that a maximum effort be made to produce jobs and job training for veterans. I fully supported both measures.

HOUSING

In order to help veterans own their own home, I supported the Veterans Housing Act of 1974, which raises the maximum level of mortgage loans guaranteed by the VA from \$12,500 to \$17,500, and increases the maximum grant for specially adapted housing for disabled veterans from \$17,500 to \$25,000.

WHAT NEEDS TO BE DONE JOBS

Veterans will not receive the job opportunities they deserve until the Federal Government becomes an energetic partner with them in seeking out employment and arranging for appropriate job training. In order that each veteran will have individual attention and guidance, I call for the establishment in the Department of Labor of an Office of Assistant Secretary for Veterans' Employment, which would provide job counseling and employment services, and strive to improve working conditions for veterans, particularly the disabled.

OVERHAUL THE PENSION SYSTEM

The serious flaws in the non-service-connected disability pension system are obvious. A substantial number of pensioners live in poverty, while some receive a pension even though their spouses have an income exceeding \$20,000. The strict limits on outside income imposed on the veteran himself means that a slight increase in his income can result in a sharp drop in the pension. Due to the social security increase of last year, on January 1 of this year 655,000 pensioners who receive social security suffered a decline in their VA pension averaging \$82. Comprehensive reform of the system, to guarantee that each pensioner will have an adequate income, and that the bulk of the assistance will go to those most in need, is necessary. A bill to reform the system, including establishing an income floor for each eligible veteran—\$2,700

for a single pensioner and \$3,900 for one with a dependent—is now pending in Congress, and it has my complete support.

EDUCATION

The educational benefits program must be continued, with the payments being increased periodically to meet the skyrocketing cost of higher education. The extra 9 months of benefits provided by the 1974 act are restricted to undergraduate work. This restriction should be removed, so that veterans choosing to seek a graduate degree may do so. Finally, the 10-year expiration date for use of the benefits should be removed. These benefits should be available to a veteran whenever he or so chooses to use them.

HEALTH CARE

New, comprehensive legislation to end overcrowding and understaffing in VA hospitals and other facilities must be enacted. This legislation should include efforts to attract more doctors, nurses, and technicians; recognize alcoholic and drug dependency as diseases that the VA generally may treat, and providing funds for this purpose; and offer counseling to veterans and their families to help with difficult adjustments from military to civilian life. In addition, complete preventive health care services should be extended to more disabled veterans. Isolating and treating medical problems in their early stages may prevent costly hospital care later on.

SPENT FUEL STORAGE AT COMMERCIAL NUCLEAR POWERPLANTS: A SERIOUS PROBLEM

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. FASCELL. Mr. Speaker, the energy crisis is still upon us. It has not simply faded into the background. Finding practical and inexpensive alternative sources of energy remains a powerful challenge to our Nation's scientists and leaders.

Nuclear energy is one of many such alternatives. It has deservedly received great attention and merit as a viable power source for the immediate and distant future.

While the potential of nuclear energy as such a source is attractive, there are nevertheless many attendant problems which deserve to be looked at: uranium enrichment, safety and design problems of nuclear powerplants, and problems dealing with the backend of the nuclear fuel cycle—the fuel recycling process—including spent fuel storage, reprocessing, and waste management in general. It is the latter which is especially important, namely, spent fuel storage and reprocessing. Serious policy questions will have to be decided by both the Energy Research and Development Administration and the Nuclear Regulatory Commission concerning these issues.

The problem of waste management is one which has concerned me for some

time. The Conservation, Energy, and Natural Resources Subcommittee of the House Government Operations Committee, of which I am a member, has held hearings on low-level radioactive waste disposal. Future hearings are planned on the disposal of high-level radioactive wastes.

The difficulties surrounding the storage of spent fuel while the Nation's three commercial reprocessing facilities are unusable is another problem of great concern.

At present, some spent fuel is being stored at the reprocessing plant in Morris, Ill. Other quantities of spent fuel are being stored at the commercial reactor sites themselves by the utilities. There is now no real problem. However, we must look to the not-so-distant future when nuclear powerplants will be accumulating more and more waste.

In order to accommodate their needs, the utilities will be forced to store their powerplants' increased spent fuel at the reactors, which have limited storage space. In about 10 years, space for storage at the nuclear powerplants will be severely limited. To provide for extra space, plants will have to increase their capability for storing spent fuel.

This is a difficulty now being faced head on by the Florida Power & Light Co., an electric utility in my district, as well as all nuclear powerplants across the country. Florida Power & Light, with admirable foresight, is now making plans to increase its storage capacity at its Turkey Point nuclear powerplant in order to handle its projected increased spent fuel. This is an encouraging step in the right direction.

However, there are adverse effects from this unfair burden to the utilities. Among those are: First, corrosion in the storage pools and keeping the radioactive material from "going critical;" second the problem of the transportation of the material to the reprocessing plant after storage at the reactor; and, most importantly, third, the potential increased cost of storage and plant expansion to the consumer.

That the cost to the consumer for this process will undoubtedly increase his utility bill is well recognized by the Nuclear Regulatory Commission.

I am glad to see that some progress is being made toward a possible solution to the storage problem. The NRC is preparing a generic environmental impact statement regarding the storage of spent fuel from light-water reactors. At the same time, they are continuing to act on license application for fuel storage, since they are aware of the adverse effects of this problem.

The Energy Research and Development Administration is also looking into the problem involved in recycling fuel. This agency is in the process of developing a plan for moving forward on reprocessing and recycling. This plan will be submitted to the Joint Atomic Energy Committee when ready. Fuel reprocessing and commercial waste management research and development appropriations under the ERDA authorization bill have increased substantially and are receiving very high visibility.

As much progress as is being made toward finding solutions to the problems of spent fuel storage and reprocessing plants, it is not enough. It is moving with the pace of a snail, while the building of nuclear powerplants is moving with the speed of sound. Some solid, substantive answers need to be provided to these complex questions before our nuclear energy program progresses at too great a speed.

Mr. Speaker, I would like to call to the attention of our colleagues an enlightening article from the Miami Herald concerning these subjects, written by Mike Toner. The article comprehensively analyzes the situation and provides a complete up-to-date report on the status of these critical problems. I think it would be of benefit to our colleagues to read the article:

SPENT FUEL CROWDING NUCLEAR PLANTS

(By Mike Toner)

Nuclear power plants, originally designed to store their fuel for only a short time after it is used, unexpectedly are becoming the repositories of large volumes of the nation's radioactive wastes.

As a result, many of the country's utilities and their customers will soon be bearing the costs—the risks—of storing a mixture of reusable uranium and long-lived wastes that they would rather not have at all.

Instead of being shipped away for reprocessing as planned, the used—but still highly radioactive—fuel discharged each year by nuclear reactors is accumulating in water-filled storage basins at power plants around the country.

Delays in the start-up of commercial fuel reprocessing plants could force many utilities to keep it there for a decade or more.

One of the three plants has been shut down since 1972 for extensive modifications. Another won't work. And the third, still unfinished has been plagued by regulatory and economic uncertainties.

But storage space is limited, and because a reactor must unload one-third of its fuel each year, the growing glut of spent fuel has confronted some utilities with a choice between expanding their storage or shutting down the plant.

At least nine reactors, including one of Florida Power and Light Co.'s units at Turkey Point, already have run out of room to discharge a full "core" of fuel—a reserve storage capacity that most operators prefer to maintain in the event it is necessary to completely empty the reactor for inspection.

Without increased storage, industry officials have estimated that 12 reactors would be unable to unload any fuel—and consequently to refuel—by the end of next year.

Operators of 22 reactors already have asked the U.S. Nuclear Regulatory Commission to approve their plans for increased storage. Work on six expansions has been authorized.

FPL has asked for approval of a \$4-million program to triple within the next 18 months the amount of fuel it can store at each of the Turkey Point reactors. Additional requests from the utilities are expected soon. Almost all of the country's 60 licensed reactors are expected to face storage difficulties within the next eight years.

Most of them have no choice. Except for limited space at the reprocessing plants themselves, there is no other place to keep the 20 to 30 tons of spent fuel that each reactor produces each year.

Utilities generally look upon the need to store more spent fuel as an inconvenience rather than a serious problem—but it is an inconvenience that their customers will share.

The cost of expanded storage will range

from \$1 million to \$3 million for each reactor.

And as long as the fuel goes unprocessed, its owners will be unable to recover the value of reusable materials in it, estimated by one reprocessing company to be worth \$10 million a year for each reactor.

There are other concerns too. The General Accounting Office has warned that spent fuel storage areas at nuclear power plants—usually located adjacent to the main reactor building—do not have "the same degree of physical protection as that provided to the reactor core," and are generally "more accessible and vulnerable to sabotage."

In its review of the security systems at nuclear power plants, the GAO concluded that increased storage of spent fuel at power plants also increased "the potential consequences of successful sabotage of the used-fuel storage facility."

And because the spent fuel is encased in bundles of metal rods that were never expected to be immersed in water for 10 years or more, the NRC is looking closely at the possibility that the fuel elements might begin to corrode after extended storage.

"There's no evidence of any problem yet, but we are researching it," says Richard Cunningham, acting director of the agency's Division of Fuel Cycle and Materials Safety.

At Turkey Point, the extended storage of spent fuel also has complicated a repair job.

Florida Power and Light Co. detected leaks in one of its spent fuel pits more than two years ago, before it began to fill it with fuel. The company didn't repair them because they were considered to be "minor."

But the leaks increased in size, and although they have been contained, actual repairs have been hampered by the presence of the spent fuel.

The possible need for utilities to store, at least temporarily, large quantities of their own wastes was recognized by the nuclear industry several years ago.

But it is only in recent months—since the full scope of reprocessing problems has become apparent—that the industry has been asking for, and getting, federal authorization to expand its storage.

Statistics gathered by both the government and the nuclear industry now show:

Growing numbers of reactors are turning out increasing amounts of spent fuel—almost 700 metric tons last year, an estimated 1,100 tons this year, and larger quantities each year in the future.

By 1980, the accumulation of unprocessed spent fuel will total approximately 9,500 tons—about the equivalent to the fuel and wastes from 300 reactor-years of operation.

But under the most optimistic expectations, only one of the country's reprocessing plants will be in service by then, and its capacity won't even match the amount of spent fuel discharged in that year alone.

As a result, the backlog of spent fuel is virtually certain to continue growing.

"Reprocessing capability probably will not catch up until sometime in the mid-1980s," explains Cunningham. "In the meantime, someone is going to have to store spent fuel."

The big question is how much for how long?

"It is prudent for utilities to plan to store spent fuel at least until the 1984 to 1985 period," says Dr. J. P. Cagnetta, chairman of the Atomic Industrial Forum's task force on the problem and director of nuclear engineering for Hartford-based Northeast Utilities.

Cagnetta's own company, however, is hedging its bets. It is preparing for the possibility that it might have to provide its own storage into the 1990s.

Even for that length of time, he says, that the cost of added storage—when compared to the \$1-billion-plus price tag of a nuclear power plant—is insignificant.

The answers, however, ultimately depend on the resolution of a growing list of eco-

economic regulatory and technological problems that face the reprocessing industry—and few in the industry claim that those are insignificant.

The country's first reprocessing plant, located at West Valley, N.Y., has been closed down since 1972 for safety improvements and expansion. Because of changes in the NRC's regulations and an anticipated two-year wait for a federal construction permit, it isn't expected to be back in service until 1982 or later.

A second plant, built by General Electric and based on a commercially unproven process, may never open. The company says the \$64-million plant it built near Morris, Ill., is "not reliable enough to make economic operation feasible."

Construction of the newest and largest nuclear fuel reprocessing plant is now nearly 95 per cent complete, but the venture still faces protracted hearings on its operating license, a lawsuit over possible releases of radiation, and still undetermined government regulations for the handling of its waste products.

The plant, built by Allied-General Nuclear Services at Barnwell, S.C., was scheduled to start up this year. It is now scheduled to begin operation in 1978, but could be delayed for several more years.

At least for the next few years, utilities will find it relatively easy to provide the necessary storage. There is adequate physical space in the storage basins; it's simply a matter of packing the fuel elements closer together.

But because the fuel elements are still radioactive, they will have to exercise care to see that the self-sustaining nuclear reaction which occurred inside the plant doesn't resume in the storage basins.

At most power plants today, the distance between the fuel elements and the boron in the water that surrounds them helps keep the spent fuel from "going critical" again.

But as the fuel is packed closer together, it will become necessary to install neutron-absorbing metal plates—similar in concept to the controls in a reactor core—to prevent the resumption of the chain reaction.

Those, however, are the problems of short-term storage, ones that the nuclear industry is confident it can handle. Long-term storage is a more complicated matter.

If necessary, utilities could expand the size of their basins, but that would cost far more than merely packing fuel elements closer together in the same space, an estimated \$30 million or more per reactor.

They could, if necessary, shuffle fuel from reactors with little space to reactors with more storage space—but that would only postpone the point at which they all filled up.

Several utilities could team up to build separate, free-standing storage basins, but that would be equally costly and the fuel would eventually have to be moved to a reprocessing plant anyway.

The reprocessing plants could expand their storage, but they are openly reluctant to accept large amounts of spent fuel until they are sure they'll be able to reprocess it.

General Electric, for instance, recently decided to more than double its storage at Morris, Ill., but has shelved plans for a further expansion from the now-authorized capacity of 300 tons to 750 tons.

And Allied-General officials say that although the storage basin at their South Carolina plant is now almost ready to accept fuel, they may not make it available until the rest of the reprocessing operations are assured.

The government doesn't want it either. Officials say there are no facilities for the storage of commercial nuclear fuel at any of the federal installations.

The Government has, however, agreed to do what it can to ease the unexpected burden of providing extra storage.

To expedite the matter, the NRC has agreed

to approve storage increases even before it completes the required environmental assessment of its actions.

Six expansions, in fact, already have been approved, although the draft of the agency's environmental impact statement won't be out until August and probably won't be in finished form for six months after that.

"We don't feel that, in terms of the environmental impact of our actions, we are making any decisions that are irreversible," says NRC's Cunningham.

The only thing that appears to be irreversible is the continued accumulation of spent fuel.

And both the nuclear industry and some of its sharpest critics agree that the continued construction of new storage space for it is really no solution at all.

"The real key to solving the spent fuel problem is for the country's reprocessing capability to keep up with the amount of spent fuel produced," explains Cunningham.

WOODY NORRIS, OF COURSE

HON. WILLIAM L. DICKINSON

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. DICKINSON. Mr. Speaker, on May 17 there appeared an editorial in the Montgomery Advertiser, one of the papers in my district, lauding a young man, Woody Norris, for being selected as national president of the Distributive Education Clubs of America. I am a great supporter of distributive education and the work ethic which it inspires in young people, and I am certainly proud of Alabama's own native son, Woody Norris, for being selected to head this 124,000-member group.

Assistant Editorial Page Editor John Bitter wrote a very interesting and informative editorial about Woody Norris which I would like to share with my colleagues:

WOODY NORRIS, OF COURSE

(By John Bitter)

If national honors were awarded on enthusiasm alone, the Robert E. Lee High School DECA folks would most likely win each year.

It's downright inspiring to watch these Distributive Education students in action.

Not only do they do an excellent job in the classroom, but they perform exceptionally well as workers.

And, on top of this, they are very active in civic projects, all of which is part of their course of study.

They're learning to become professionals in the fields of sales, marketing and distribution.

Therefore, they spend the first half of their school day in the classroom, the remainder on the job, working in local business establishments.

And in their scarce spare time, they're generally involved in some sort of outside endeavor: bringing cheer to the elderly, helping the less fortunate, and becoming involved in a host of other community endeavors—for this is exactly what they will be doing in later years as adult workers.

But what is most inspiring is the way they go about it all.

Indolence and sloth have no place in the DE environment. It's work, work, work. But at the same time, what's going on has all the outward appearance of fun, fun, fun. And it is both.

Well, enough of this.

These DE students in schools across the land are also members of what they call the Distributive Education Clubs of America (DECA).

And part of their club activities includes competition at the local, regional and national levels.

They vie for awards in a number of projects, including holding elective office.

Each school has DECA officers, as does the state.

They are elected by their peers, who can be extremely choosy about whom they pick for leadership positions.

Well, this year it finally happened. One of Montgomery's own was elected as National DECA President.

Woody Norris, a senior at Lee, was elected to head the 124,000-member group at its annual convention in Chicago last week.

I know Woody, and am not surprised.

He exemplifies the spirit and enthusiasm of all DE students, both in Montgomery and Alabama, as well as across the land.

I'm happy for Woody, as well as for Mrs. Sara T. Parnell, the guiding light of Lee's DE program, and for his fellow students.

Woody has brought a signal honor to his school, and his state.

I'm sure we will be hearing more about Woody in the years to come.

And while Woody's just a typical DE student, his colleagues thought he was more typical than most.

A lot of us knew this all along.

THE PROMISE OF U.S. AFRICA POLICY * * *

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. RANGEL. Mr. Speaker, impatience and frustration are beginning to develop as the United States continues to invoke illusory promises in regard to African foreign policy. Political considerations are apparently preventing effective implementation of the positive change in our policy toward black Africa that was promised during Secretary Kissinger's recent visit. It is a delicate situation, Mr. Speaker but in this election year we are all awkwardly suffering challenges to the decisions we make every day in our capacity as elected officials. Meanwhile our dormancy toward an effective relation between the United States and Africa is bound to end in disastrous consequences if the administration does not emerge from its political straitjacket and send to the Congress specific legislative proposals to implement the policy recommendations made by Secretary Kissinger during his Africa trip. We cannot afford to allow other nations to fill in the gap given the social, economic, political and militaristic benefits that we stand to gain if the United States assert interests in the African nations as we have done with other countries.

At this time, I would like to share with my colleagues an insightful recapitulation of recent events in this area and a forceful appeal to the United States to take cognizance of these events so that we might choose the more effective route in implementing our Africa-United States relations. Herewith I submit "The Promise of U.S. Africa Policy * * * " au-

thored by our colleague Congressman ANDREW YOUNG and recently printed in the Washington Post:

THE PROMISE OF U.S. AFRICA POLICY . . .

(By Andrew Young)

Secretary Kissinger's trip to the African continent has generated tremendous impact. The conservatives of the President's party try to blame Ford's losses and Reagan's triumphs on Kissinger's Lusaka message; former diplomat George Kennan has reached into his cold-warrior bag of ready explanations to doomsay the Kissinger expedition; and liberals of both parties view the visit with suspicion and doubt.

There is now an image of southern Africa in flames, a holocaust of genocide against white lives and civilized values. Undoubtedly others from every corner—professors, politicians and media commentators—will soon jump on the southern African bandwagon to have their say.

But what did the Kissinger safari promise in its re-orienting of U.S. foreign policy toward Africa? We should not forget that just three months ago this country was bogged down in an African misadventure, Angola. Intervening on the wrong side, which had South African assistance, cost us a lot of black African friends and the consequences have not all been felt yet. The Cubans remain in Angola while the South Africans have left.

Angola is so haunting to our national psyche that we have yet to recognize the MPLA government. Against that background, Kissinger's efforts, however small, did begin a new era of at least minimal recognition of the importance of the Third World in U.S. policy. But what was really committed and how do the promises affect our nation's self-interest?

To me, the national self-interest is quite evident. Africa has immense mineral and other wealth upon which we will increasingly depend. Our economic future and Africa's growth will revolve on access to expanding markets as well as the availability of U.S. technology. Already our trade balance and investment volume on the African continent has shifted in favor of the black developing states as opposed to South Africa. According to the Department of Commerce, U.S. trade with Africa in the first half of 1975 increased at a much more rapid pace than our trade with the rest of the world. Nigeria, as one example, sells us her oil products and ranks sixth as a source of U.S. imports. Economics has always helped to determine politics in this country.

What seems apparent, therefore, is that the United States has agreed that whites in southern Africa cannot maintain privileged, elitist rule. This is a significant admission when one considers the Nixon-Kissinger "tilt" initiated in 1969.

There is no joy in this policy shift, only a confrontation with political realities. Angola was the hammer that struck this proper chord into place. The United States finally has deduced that there are no realistic alternatives to armed struggle, given our past refusal to be involved in diplomatic and economic approaches to pressure a political capitulation from Ian Smith. While Kissinger smiled on the Callaghan proposal, it was a throwaway. The British have never been able to do anything against Smith, but guerrilla warfare may drive him to the London constitutional table in a few months. The United States, Kissinger asserts, will remain pure in this period of struggle, unlike the Angola attempt. No arms to the liberation movements; whites will not be killed by American guns.

In addition, a commitment by the United States to South Africa has been publicly made. The already existing dialogue between Prime Minister Vorster and State Department policy-makers is now above board

and clear-cut. Angola predicted this relationship, Kissinger confirmed it.

South Africa may be saved from massive turmoil and bloodshed if it does three things: force Smith to step down; set a timetable for Namibian self-rule; and abolish the cruder realities of internal apartheid. What is not said, of course, is what else South Africa then perhaps could count on from the United States: a lifting of the arms embargo; softer monetary policies in World Bank and IMF decision-making; extension of direct loans from the EXIMBANK; possibly recognition of the Transkei, South Africa's first Bantustan, for instance.

In the short run, armed struggle within Rhodesia's borders will increase. A few thousand whites will pack up and leave out of racial arrogance rather than actual danger. Political pressure on Ian Smith will escalate to set up real talks that lead to majority rule. Zimbabwe will be born, and it will be born quickly if Botswana can get the money to cut off Rhodesia's other rail link.

Namibia also will win liberation within a short time. SWAPO is poised to enter constitutional talks the moment South Africa agrees to majority rule. In reality, the 5 to 1 ratio makes this fact so. Until then, the next few months will bring increased guerrilla struggle with the threat of Cuban-Angolan intervention hanging overhead. African states, including Nigeria, welcome the Cuban threat, but privately prefer to see the liberation of Rhodesia and Namibia without their involvement. Assistance of advisers from Tanzania and Mozambique is an obvious attempt to say to Cuba and Russia, "We want to try it on our own. Arms, yes; troops, no."

So I, for one, think Kissinger's African safari was both necessary and instructive. If the Kissinger visit had not taken place now, then Ford's tendency toward Republican isolationism would have allowed a drift in events whereby further dependence on Soviet and Cuban intervention in southern Africa would become almost certain.

I am personally sorry that African affairs have to become a political football since problems there are of great magnitude and require sustained rather than expedient analysis. But the signals Secretary Kissinger set off are better than any I have seen from American policy managers since the Kennedy administration.

Whether they are too little and too late remain to be seen. A new administration in November, however, will build on them and avert unnecessary destruction and costs in human lives in the southern Africa of the future.

THE BURDEN OF REGULATION

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. McDONALD of Georgia. Mr. Speaker, there is growing awareness across the political spectrum of the enormous burden that must be borne by everyone due to Government regulation of the economy. But efforts to do something about it are meager, to say the least. Legislation is introduced to study the problems of the flood of Federal paperwork and to restrict the activities of a regulatory agency a smidgen here and there.

Meanwhile, the Government continues to crank out regulations restricting economic activity, eliminating jobs and driving up the price of virtually all goods and services.

Clearly the answer is deregulation—a wholesale phaseout of most, if not all, Government regulatory agencies. Once the public realizes just how enormous the burden of Government regulation is, I believe we will begin moving more quickly to free the economy from these Government-mandated restrictions on production and progress.

Therefore, I would like to call attention to the following article by Stephen M. Aug, "Burden of Regulation Is Huge, But How Huge?" which appeared in the Washington Star on May 16, 1976.

The article follows:

BURDEN OF REGULATION HUGE, BUT HOW HUGE?

(By Stephen M. Aug)

A year ago, the Dow Chemical Co. decided to build a new \$500 million petrochemical complex near Pittsburg, Calif. Although not a spadeful of dirt has been turned since then, Dow already has spent \$1.3 million just on government regulatory matters involving the project.

"We are having to obtain 60 different building permits from 19 federal, state, regional and county agencies," Charles T. Marck, Dow's Washington vice president, said recently. He predicted that in addition to the \$1.3 million already spent, it will take at least two more years to obtain the necessary permits—and then there likely will be court suits in opposition.

Dow's complaints about the cost of government regulation—including the increasing burden of paperwork required by a growing federal bureaucracy—underline those of President Ford last week when he introduced legislation aimed at trimming federal controls over business.

Although the Ford Administration's activities in regulatory reform so far have been concentrated on economic regulation—principally the pervasive regulation practiced by the Interstate Commerce Commission and Civil Aeronautics Board—businessmen are equally (if not more) exercised over extremely costly paperwork, minutiae involved in occupational safety and equal employment requirements and the sometimes conflicting missions of several federal agencies.

Consider the problems facing Ervin (Pete) Pletz, board chairman and president of the Barry Wright Corp. of Watertown, Mass., a producer of computer data storage equipment and shock vibration and noise control products.

"We're up too far in government regulation," said Pletz, who is also chairman of a new National Association of Manufacturers regulatory task force.

"Because we do some government work, we are, of course, under severe regulations as far as equal employment, and certain other matters like renegotiations, (renegotiating sales agreements involving the federal government), and then, of course, we do have a pension fund and the ERISA requirements involving the federal government), and then, of course, we do have a pension fund and the ERISA requirements are confounding." ERISA is the Employee Retirement Income Security Act, the new law regulating pensions and other employee benefits.

Pletz, whose firm has about 1,000 employees and does about \$43 million in annual sales, has a staff of two who spend substantially all of their time on government regulatory matters.

Most of his current complaints are directed at the new pension reform law. Although he concedes a law was necessary, he believes it's gone too far. Barry Wright, he recalls, had its own pension plan, one it voluntarily set up. "Now we've got all kinds of regulations that require all kinds of forms. I think that's unnecessary."

Gordon Miller, Barry Wright's industrial relations manager, is the man in charge of the forms. "We have 12 pension or welfare plans which in one way or another are subject to ERISA," Miller says. "Five of those plans have what I call full reporting and communications requirements, and I figure that for the five in the next 12 months we've got to issue 30 reports or notices of some form or another, and then a lot of those repeat each year."

Some of the 30 reports, he points out, go to the government—principally the Internal Revenue Service and the Labor Department—while others go to employees. He figures, for instance, that he'll send eight pages of material to each employee at the end of May.

And that's just a small part of the regulatory cost to any company. Pletz has no figures on what government regulation actually costs his company, but larger corporations do. One of those with a comprehensive program for finding out the costs is Dow.

The huge chemical firm's figure on what government regulation is costing for just its one plant in California is no generalization. Joseph Bevirt, a senior analyst on Dow's marketing management staff at Midland, Mich., says the bill thus far for the Sacramento River petrochemical complex includes:

\$650,000 for "an environmental impact report the first time around. How many more we'll do is hard to say."

\$100,000 for an environmental statement for the U.S. Army Corps of Engineers, which apparently requires its own environmental statement different from another that Dow had to supply to all other state, local and federal agencies.

\$25,000 for a special study on the effect of the plant on the particular county in which it is to be located.

\$125,000 for a study on the risks of spills and cleanup, required by a federal agency Bevirt couldn't immediately identify.

\$200,000 for air, water and water discharge permits.

\$200,000 to build two air monitoring stations "so they know what the air was like before and what it will be after" the plant is built.

\$50,000 for a study of conditions on the bottom of the Sacramento River.

Yet to come are such matters as soil and earthquake studies.

Under Bevirt's direction, Dow has under way what is probably the most detailed study of the cost of government regulation ever undertaken by a private corporation. It is expected to be a pilot study for other corporate studies and all of them are likely to be used as part of a nationwide effort by business firms to cut the amount of government regulation.

So far the Dow study covers 71 federal agencies whose activities involve the corporation, ranging from the Agency for Consumer Advocacy (which has yet to be approved by Congress) and the Atomic Energy Commission to the Securities and Exchange Commission and the Tariff Commission. Dow plans to separate the costs according to whether they are necessary, unnecessary or questionable.

Although Dow hasn't yet come up with final figures, indications are the totals will be staggering. Marck told an NAM panel on government regulation recently that in a research and development group in one of Dow's 10 product departments, the cost of federal regulations has risen from \$164,000 in 1970 to \$1.5 million last year, from 2 percent of the department's budget to 13 percent.

Everybody, of course, pays for these costs of regulation. General Motors Corp. contends that in 1974—the latest year for which it has

figures—it utilized the equivalent services of 25,300 fulltime employees to cope with government regulation at all levels. The cost was \$1.334 billion, and that doesn't include taxes.

Figuring that GM sold 4.6 million automobiles in the United States that year, and they accounted for about three-quarters of GM's \$31 billion in sales, that means government regulation added more than \$200 to the price of every automobile.

GM breaks down its regulatory costs this way:

Regulation of vehicles (including research and engineering, reliability, inspection, testing, facilities tooling costs—but not including the direct cost of the product): \$884 million.

Regulation of plant facilities (plant pollution and solid waste control): \$181 million. Occupational safety and health: \$79 million.

Government reports and administrative costs related to regulation including business statistics, energy and environmental activities, legal activities and the like: \$190 million.

So far, there have been few efforts like those at GM or Dow. But under the program being pushed by the NAM more firms are expected to undertake detailed studies.

Administration officials say they'll rely heavily on outside studies—principally those by private industry—to identify the costs of regulation in connection with Ford's reform program. NAM, with its 13,000 members, and with a 50-member regulatory reform task force that includes some of the nation's largest corporations, is in a position to influence administration thinking on regulatory reform, especially if the corporate world is the sole source of such information.

So far, estimates of the cost of government regulation are just that—and nobody knows how close they come to the truth. Ford told small businessmen last Thursday that it was costing them \$18 billion a year just to meet requirements for government reports.

Sen. Paul J. Fannin, R-Ariz., in a recent speech in the Senate, said the Federal Trade Commission had "found \$80 billion of waste in the American economy attributable to regulatory overkill. The General Accounting Office has put the yearly costs of regulation at \$60 billion. Perhaps a more meaningful figure is the \$130 billion direct and indirect costs to consumers estimated by the President's Council of Economic Advisers."

Meanwhile, the government continues cranking out new rules every working day.

Consider, for example, last Thursday, the day the President announced his reform program:

The Interior Department issued new rules setting up "a greatly simplified system of permitting qualified persons to buy or sell" certain species of wildlife—along with "a record-keeping system sufficient to enable the (Fish and Wildlife) Service to monitor the well-being of the captive population."

The Federal Communications Commission issued amendments to its rules which regulate cable television systems.

The Federal Reserve System issued amendments to its Regulation B (equal credit opportunity).

The Department of Agriculture issued new standards to "more accurately describe" certain grades of tobacco; new standards governing oleo stock and tallow, and new regulations on testing and producing seeds.

How much—if anything—these new rules will cost the public in terms of additional paperwork or changes in existing procedures was not mentioned in the notices of the new rules.

In fact, it is probably true that nobody knows the cost—nor, in fact, is it likely that anyone has bothered to find out.

THE SNAGS AND DENS OF OUR FORESTS

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 27, 1976

Mr. BROWN of California. Mr. Speaker, the ecological balance of our forests is often referred to when the subject of multiple use management is discussed. There are many opinions regarding the effects of clearcutting large acreages of trees, especially where such cuts eliminate the natural habitats needed for particular bird species or the other wildlife of the forests. The protection of dens and snags is a major point of conflict, because the timber industry feels that such a regulation protecting their existence would be too extreme while wildlife experts argue the strong need for such a provision—not only for the preservation of various bird and animal species, but to safeguard the biological balance which controls the size of insect and rodent populations without the heavy use of pesticides.

Gordon Robinson, consulting forester for the Sierra Club, has compiled a list of reports on most of the wildlife species of our forests—their food and habitat requirements, and their role in the natural system of pest control and regeneration of trees in our forests. From his brief summary of each report it is easy to extrapolate the effect of removing the nesting places of rodent and insect-eating birds. One such report stated:

A reduction of bird populations within a forest could result in harmful increases in insect population. Cavity-nesting birds depend on dead and unmerchantable trees for nesting and roosting. These trees are considered a fire hazard and a physical hazard in intensively used areas and are removed by loggers in the West.

Rodent populations can easily become uncontrollable as the predators of the area, such as hawks and owls, depart for other more favorable environments. These rodents will then curtail regeneration of our forests since seeds are their required food. Another report summary states:

In clearcutting there is no really good way to counteract the effect of rodents and seed-eating birds that retard natural and artificial re-seeding, other than keeping the openings small. Use of diseases, trapping, shooting, repellants, mulches, screens, and predator control all have met with only limited success.

Such casual destruction of our fragile forest environment should be scrutinized in a thorough deliberate fashion. I hope my colleagues will read the following summaries of the many, varied reports on wildlife and their role in our forests, prepared by Mr. Robinson. It clarifies the problems that we must deal with:

THE SNAGS AND DENS OF OUR FORESTS

(By Gordon Robinson)

SCREECH OWL, CAVITY-NESTING BIRD

Food: Major items are mice (rodents are known to deter natural regeneration by eating seeds) and insects in equal volume.

Birds and other rodents are also part of the diet.

Nest: Natural cavities and flicker holes in apple, pine, poplar, and sycamore trees.

Range: Throughout the continental U.S., southern Canada, and southeastern Alaska.

Scott, Virgil E. and Patton, David R. "Cavity-nesting Birds of Arizona and New Mexico Forests." USDA Forest Service Technical Report RM-10, Rocky Mountain Forest and Range Experiment Station, 1975.

AMERICAN KESTREL, CAVITY-NESTING BIRD

Food: Meadow mice, deer mice (rodents which deter natural regeneration by eating seeds) and house sparrow make up about 96% of the volume. Insects are 80% of the prey and 4% of the volume.

Nest: Usually in natural cavities or old woodpecker holes, mostly dead trees. Also lightning scars of live trees.

Range: From southeastern Alaska to South America.

Scott, Virgil E. and Patton, David R. "Cavity-nesting Birds of Arizona and New Mexico Forests." USDA Forest Service Technical Report RM-10, Rocky Mountain Forest and Range Experiment Station, 1975.

WHISKERED OWL, CAVITY-NESTING BIRD

Food: "The principal diet is insects."

Nest: In natural cavities and old flicker holes, mostly in white oak between 4,000 and 6,500 feet.

Range: Southern Arizona and southern New Mexico to El Salvador.

Scott, Virgil E. and Patton, David R. "Cavity-nesting Birds of Arizona and New Mexico Forests." USDA Forest Service Technical Report RM-10, Rocky Mountain Forest and Range Experiment Station, 1975.

PGMY OWL, CAVITY-NESTING BIRD

Food: Mostly mice (rodents are known to deter natural regeneration by eating seeds) and larger insects such as grasshoppers.

Nesting: Usually in old holes of woodpeckers.

Range: (Resident) Western North America from Alaska to Guatemala, at 5,000 to 10,000 feet.

Scott, Virgil E. and Patton, David R. "Cavity-nesting Birds of Arizona and New Mexico Forests." USDA Forest Service Technical Report RM-10, Rocky Mountain Forest and Range Experiment Station, 1975.

CAVITY NESTING BIRDS IN THE SOUTHWEST

A reduction of bird populations within a forest could result in harmful increases in insect population. Cavity-nesting birds depend on dead and unmerchantable trees for nesting and roosting. These trees are considered a fire hazard and a physical hazard in intensively used areas and are removed by loggers in the West. Because of the economic and aesthetic value of cavity-nesting birds, their habitat requirements must be considered in management plans. There are 41 species of cavity nesting birds in the forests of Arizona and New Mexico.

Scott, Virgil E. and Patton, David R. "Cavity-nesting Birds of Arizona and New Mexico Forests." USDA Forest Service Technical Report RM-10, Rocky Mountain Forest and Range Experiment Station, 1975.

FLAMMULATED OWL, CAVITY NESTING BIRDS

Food: Insects such as beetles, moths, grasshoppers, crickets and ants.

Nest: In flicker and other woodpecker holes of dead pine, ash, and aspen trees.

Range: Breeds in forests of ponderosa pine from the Rocky Mountains west to the Pacific Coast and from British Columbia to Guatemala.

Scott, Virgil E. and Patton, David R. "Cavity-nesting Birds of Arizona and New Mexico Forests." USDA Forest Service Technical Report RM-10, Rocky Mountain Forest and Range Experiment Station, 1975.

PREDATOR CONTROL OF RODENTS

"Predators such as hawks, owls, and carnivorous mammals take small rodents wherever they are found, but rarely are the rodents controlled to the point where their influence on forest regeneration is completely removed. In general, the predator-prey relationship is somewhat stabilized, so that a rodent population adequate to maintain food for the predators is oftentimes sufficient to exert serious pressure on the natural or artificial reseeding of forests."

This is an indication of the severity of disturbance produced by clearcutting. The elements of the ecosystem which normally control balance are no longer effective.

Smith, Clarence F. and S. E. Aldous, The Influence of Mammals, and Birds in Retarding Artificial and Natural Reseeding of Coniferous Forests in the United States, Journal of Forestry, 45:5, pp. 361-369.

DEER HABITAT

"Deer use was confined to perimeters of circular openings of more than 20 acres in spruce-fir habitat (or strip more than 1,050 feet across)."

This suggests that openings of more than 20 acres are disadvantageous to deer.

Reynolds, Hudson G., Improvement of Deer Habitat on Southwestern Forest Lands, Journal of Forestry, 67:11, pp. 803-805. November, 1969.

ROCKY MOUNTAINS—ELK AND DEER—RESPONSE TO CLEARCUTS AND FIRE

In the Wild Bill Range Study area, wildlife preferred an area burned by wildfire to areas thinned, clearcut, or clearcut and seeded. Elk use was declining on the clearcuts. Deer use declined on all the logged areas and continues to decrease. The deer use increased on the area burned by wildfire.

Kruse, William, "Effects of Wildfire on Elk and Deer Use of a Ponderosa Pine Forest," USFS Res. Note RM-226, USDA 1972.

SOUTH

Immediate damage to all species of wildlife. Squirrel and turkey habitat lost permanently in areas planted to pines. After one to two years, deer, quail and rabbit habitat returns, then is again lost as pines mature and shade out other species of desirable plants. Long range damage affects all species of wildlife. Loss of most restricts carrying capacity of most wildlife species. Erosion following clear-cutting is detrimental to streams.

Statement presented by Charles D. Kelley, to the Alabama Conservancy, Feb. 26, 1972, Auburn University, Auburn, Alabama. Quoted from a report from an unidentified game biologist with the State.

DEER—OPENING SIZE AND ROTATION LENGTH

"Deer use . . . tended to reflect the amount of understory vegetation present in overstory classes . . . Mature residual stands were slightly preferred over openings, and deer tended to avoid dense, pole-sized stands of timber. This suggests that factors other than understory vegetation may influence use of an area by deer."

Therefore, any management practice leading to the formation of pole-sized stands is disadvantageous to deer. Rotations should be long enough so that the stands maximally resemble the mature forest and openings should be small enough so that pole-size stands don't develop.

Reynolds, Hudson G., "Effect of Logging on Understory Vegetation and Deer Use in a Ponderosa Pine Forest of Arizona," December, 1962, USDA Forest Service Research Note, RM-80.

BIRDS

Many species of hawks and owls require dead standing trees as habitat. These birds devour tremendous numbers of small seed-

eating rodents as determined from examination of their pellets. It is therefore important to leave the snags in order to encourage these birds who will in turn control the rodent population, and permit natural reforestation; a very important phenomenon.

Gilliland, E. Thomas, "Living Birds of the World," American Museum of Natural History, New York, 1958.

CONTROL METHODS FOR RODENTS AND SEED-EATING BIRDS

In clearcutting there is no really good way to counteract the effect of rodents and seed-eating birds that retard natural and artificial re-seeding, other than keeping the openings small. Use of diseases, trapping, shooting, repellants, mulches, screens, cultural control, and predator control all have met with only limited success.

Smith, Clarence F., and S. E. Aldous, "The Influence of Mammals and Birds in Retarding Artificial and Natural Reseeding of Coniferous Forests in the United States," Journal of Forestry, 45:5, pp. 361-369.

EASTERN WILD TURKEY

The eastern wild turkey (Meleagris gallopavo) "was once abundant in mature virgin forests, but as these forests were cut the turkey experienced hard times."

Bottom land, hardwood forests are considered prime habitat for turkey, and conversion of these forests to cropland causes serious hardship to the turkey.

"The best habitat comprises stands of mixed hardwoods, groups of conifers, relatively open understories, scattered clearings, well-distributed water, and reasonable freedom from disturbance."

Halls & Stransky, "Atlas of Southern Forest Game," Southern Forest Experiment Station, U.S.D.A., 1971.

GRAY AND FOX SQUIRRELS

Squirrel hunting reaches its peak of popularity in the South. Both species of squirrel are having a hard time. Eradication of upland hardwoods, removal of den trees, shortening of timber rotations, conversion of bottomland forests to cropland and pasture, and construction of large reservoirs restrict squirrel habitat more each year.

Halls and Stransky, "Atlas of Southern Forest Game," Southern Forest Experiment Station, 1971.

WHITE-TAIL DEER

The white-tail deer inhabits mainly bottom-land hardwood forest, also loblolly-shortleaf pine-hardwoods and to some extent oak-pine and longleaf-slash pine forests with a range within 1/2 to 1 mile of birthplace. Timber management determines whether cover and food are adequate for yearlong. Best habitat in forests with many small and well dispersed openings within the deer's home range, and in areas where timber thinning is frequent and heavy. In pinelands, a favorable habitat includes where trees are at least 12 to 15 feet tall and prescribed burns every 3 to 5 years are recommended to improve forage quality and quantity and to increase legumes. These forest types are not common in national forests.

Halls & Stransky, "Atlas of Southern Forest Game," Southern Forest Experiment Station, 1971.

BOBWHITE QUAIL

Eastern bobwhite lives in the South. During the early 1900's a combination of small patch farming, timber clearing, and field burning produced population highs that are unlikely to be equalled again. Since 1939, mechanized agriculture, reforestation, limited fire use, and conversion of cropland to improved pasture have caused quail to decline. Being seed-eating birds, the quail naturally decline as forest cover returns.

Halls and Stransky, "Atlas of Southern Forest Game," Southern Experiment Station, 1971.

RED-COCKADED WOODPECKER

This vanishing woodpecker nests only in shortleaf or loblolly pines suffering from red-heart disease. Present timber harvesting techniques have greatly diminished its nesting habitat. A major forest products firm is modifying its harvesting techniques to protect this woodpecker.

Anderson, Walter C. "Southern Forestry Investments in an Era of Environmental Concern," Forest Products Journal, V. 22, N. 6, June, 1972.

SOUTHERN HARDWOODS WOODPECKERS AND HARDWOOD BORERS

Redbellied, Hairy, Downy, Redheaded, and Pileated Woodpeckers were observed in hardwood stands heavily infested by borers. These birds are less efficient in stands with average or low borer populations. "Borer species that infest small trees, especially those under 6 inches in diameter, are more apt to be captured by woodpeckers than those that attack larger trees."

"Although the holes made by woodpeckers may cause additional windbreakage and disease incidence in infested trees, the benefits from reduced borer populations are far more valuable than the lost timber."

Solomon, J.D. and Morris, R.C., "Woodpeckers in the Ecology of Southern Hardwood Borers," 2nd Tall Timbers Conference on Ecological Animal Control by Habitat Management, Proceedings, 1971.

RACCOON

Raccoons inhabit primarily the hardwood forests along rivers, small streams, and

swamps. They are also found in mixed pine-hardwood forests, but seldom far from water. Lack of den trees may limit populations.

Halls, Lowell K. and Stransky, John J. "Atlas of Southern Forest Game," Southern Forest Experiment Station, Nacogdoches, Texas, 1971.

AMERICAN WOODCOCK

The South is the wintering ground for migratory woodcocks (*Philohela minor*). The preferred winter range is in wet areas (streams, bayous, marshes) bordered by southern pines or hardwoods. Small clearings are important for mating rituals, which should be near feeding areas and brushy nesting cover.

Halls and Stransky, "Atlas of Southern Forest Game," Southern Forest Experiment Station, USDA, 1971.

QUAIL DEATH BY SEED POISON

A Questioner reported that large numbers of quail and doves have died from eating treated pine seed on direct seeded sites.

The rebuttal said that this was probably due to mis-application of the poison.

Campbell, Robert. "Manipulating Biotic Factors in the Southern Forest," "The Ecology of Southern Forests," Louisiana State Univ. Press, 1969.

RUFFLED GROUSE

Ruffed grouse is an edge species which requires small openings in the forest. Prime habitat is found in extensive forests with a wide variety of cover types including hardwoods and conifers. Access to drumming logs is essential. Heaviest population in area of national forests in Virginia, Tennessee, and North Carolina.

Halls and Stransky, "Atlas of Southern

Forest Game," Southern Forest Experiment Station, 1971.

During timber stand improvement some sportsmen advise halting the removal of den- and mast-bearing trees which are important to wildlife. These trees are the prime targets of timber stand improvement, but only where these trees are very large or in great number will the value lost to timber production be substantial.

Anderson, Walter C. "Southern Forestry Investments in an Era of Environmental Concern," Forest Products Journal, Voy. 22, No. 6, June, 1972.

BLACK BEAR

Only 9,000 black bear live in the South; mainly in areas of national forests, principally George Washington, Chattahoochee, Nantahala, Cherokee, and Osceola. Since the bear requires extensive undisturbed forests, he is now confined to less accessible forested mountains, to thickets along river bottoms, and to large swamps. Areas managed for bear should be kept remote by limiting the extent of year-round roads.

Halls, Lowell K. and Stransky, John J. "Atlas of Southern Forest Game," Southern Forest Experiment Station, F.S., USDA, 1971.

BIOLOGICAL CONTROL

"Woodpeckers are the most important predators of the spruce beetle (*Dendroctonus rufipennis* Kirby). In some areas (of Colorado Engelmann spruce stands) they have destroyed as much as 75% of the beetle population."

"... woodpecker activity and abundance appear correlated with beetle abundance."

Massey, Calvin L. and Noel D. Wygant. "Woodpeckers: Most Important Predators of the Spruce Beetle," Colorado Field Ornithologist, No. 16, June 1973.

SENATE—Friday, May 28, 1976

The Senate met at 9:45 a.m. and was called to order by the Acting President pro tempore (Mr. METCALF).

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Make ready our hearts, O Lord, for the memorial of those who have valiantly fought and bravely died for this Nation. Bring comfort to those who see again in memory's vista the parade of those who marched away never to return. Be especially near to those who even now bear in their bodies the trauma of war, granting them the assurance of a grateful people.

May our response to their self-giving be purer lives, nobler service, and deeper dedication to the causes for which they gave so much. And may we live worthily in a nation with liberty and justice for all in a world at peace.

As enjoined by the President's proclamation, may we and our fellow citizens on Monday next bow our heads and hearts in suitable memorial for the brave sons of every generation who pledged their lives in the service of others.

We pray in His name who went before us in the way of sacrificial service. Amen.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, May 27, 1976—

Mr. ALLEN. Reserving the right to

object, Mr. President, I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. May I complete my motion? The Senator will have plenty of time to object.

Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, May 27, 1976, be dispensed with.

Mr. ALLEN. Mr. President, I object. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Objection is heard. The clerk will read the Journal.

Mr. ALLEN. Mr. President, I object, and I suggested the absence of a quorum.

The ACTING PRESIDENT pro tempore. I did not hear the absence of a quorum part of the Senator's statement. The clerk will call the roll at the request of the Senator from Alabama.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. ALLEN. I object.

The ACTING PRESIDENT pro tempore. Objection is heard. The clerk will call the roll.

The call of the roll was resumed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. ALLEN. I object.

The ACTING PRESIDENT pro tempore. Objection is heard. The clerk will continue.

The second assistant legislative clerk continued with the call of the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded, so that I may make a further unanimous-consent request.

Mr. ALLEN. I object. The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. ALLEN. I reserve the right to object. Will the Senator reinstate his request?

Mr. MATHIAS. Yes. Mr. ALLEN. Mr. President, I withdraw the objection.

Mr. MATHIAS. Mr. President, I renew my request that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATHIAS. I now ask unanimous consent that—

The ACTING PRESIDENT pro tempore. The clerk will read the Journal.

The legislative clerk proceeded to read the Journal of Thursday, May 27, 1976.

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The reading of the Journal, which has begun, may not be interrupted by a quorum call.

Mr. ALLEN. Very well. The legislative clerk continued with the reading of the Journal of Thursday, May 27, 1976.

Mr. ALLEN. Mr. President, I ask unanimous consent that further reading of the Journal be dispensed with.